

LOCAL GOVERNMENT ACT 1995

SHIRE OF MUNDARING

**ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES
AND PUBLIC PLACES LOCAL LAW**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Mundaring, resolved on the 24th day of February 2004 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the Shire of Mundaring Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law.

1.2 Definitions

In this local law unless the context otherwise requires -

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

"**applicant**" means a person who applies for a permit;

"**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;

"**built-up area**" has the meaning given to it in the *Road Traffic Code 1975*;

"**bulk rubbish container**" means a bin or container designed or used for holding a substantial quantity of rubbish and which is unlikely to be lifted without mechanical assistance, but does not include a bin or container used in connection with the local government's regular domestic rubbish collection service;

"**carriageway**" means the paved or made portion of a thoroughfare used or intended for use by vehicles;

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

"**commencement day**" means the day on which this local law comes into operation;

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

"**crossing**" means a crossing giving access from a public thoroughfare to -
(a) private land; or

(b) a private thoroughfare serving private land;

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

"**footpath**" means the paved or made portion of a thoroughfare used or intended for use by pedestrians and cyclists, a wheel-chair or any device designed for use by a physically impaired person on a footpath, and a pram, a stroller or a similar device;

"garden" means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;

"intersection" has the meaning given to it in the *Road Traffic Code 1975*;

"kerb" includes the edge of a carriageway;

"lawn" means any part of a thoroughfare which is planted only with grass, or with a similar plant, but will include any other plant provided that it has been planted by the local government;

"liquor" has the meaning given to it in section 3 of the *Liquor Licensing Act 1988*;

"local government" means the Shire of Mundaring;

"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*;

"owner" or **"occupier"** in relation to land does not include the local government;

"permissible verge treatment" means any of the treatments described in section 2.7(2);

"permit" means a permit or written approval issued under this local law;

"permit holder" means a person who holds a valid permit;

"person" does not include the local government;

"premises" for the purpose of the definition of "public place" in both this section and section 4.1, means a building or similar structure, but does not include a carpark or a similar place;

"public place" includes

- (a) any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, and
- (b) local government property;

but does not include premises on private property from which trading is lawfully conducted under a written law;

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

"sign" includes a notice, flag, mark, structure or device on which may be shown words, numbers, expressions or symbols;

"town planning scheme" means a town planning scheme of the local government made under the *Town Planning and Development Act 1928*;

"vehicle" includes –

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

"verge" means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

- (1) The following local laws are repealed –

Local Laws Relating to –

Street Lawns and Gardens, published in the Government Gazette of 7 August 1963, as amended in the Government Gazettes of 21 January 1977 and 12 August 1977;

Removal and Disposal of Obstructing Animals or Vehicles, published in the Government Gazette of 1 December 1970, as amended in the Government Gazettes of 29 July 1977, 18 December 1981 and 7 December 1990;

New Street Alignments, published in the Government Gazette of 6 July 1971;

Stalls, published in the Government Gazette of 14 September 1979, as amended in the Government Gazette of 15 September 1989;

The Control of Hawkers, published in the Government Gazette of 14 September 1979;

Streets, published in the Government Gazette of 7 November 1980;

The Parking of Vehicles on Street Verges, published in the Government Gazette of 3 May 1985.

- (2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subsection (2) specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

PART 2 – ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

Division 1 - General

2.1 General prohibitions

A person shall not -

- (a) plant any plant on a thoroughfare -
 - (i) which is poisonous or prickly or may cause a hazard;
 - (ii) which exceeds or which may exceed 0.75m in height so that the plant is within 6m of an intersection; or
 - (iii) (except grass or a similar plant) so that it is within 2m of a carriageway;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless –
 - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
 - (ii) the person is acting under the authority of a written law;
- (c) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (d) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (e) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (f) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device.

2.2 Activities allowed with a permit - general

(1) A person shall not, without a permit –

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government;
- (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
- (d) cause any obstruction to a water channel or a water course in a thoroughfare;
- (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
- (f) damage a thoroughfare;

- (g) light any fire or burn any thing except leaves or garden material/refuge that is collected on a thoroughfare;
 - (h) fell any tree onto a thoroughfare;
 - (i) unless installing or in order to maintain a permissible verge treatment -
 - (i) lay pipes under or provide taps on any verge; or
 - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
 - (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
 - (k) on a public place use anything or do anything so as to create a nuisance;
 - (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
 - (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.
- (2) The local government may exempt a person from compliance with subsection (1) on the application of that person.

2.3 No possession and consumption of liquor on thoroughfare

A person shall not:

- (a) consume any liquor on a thoroughfare; or
- (b) have in her or his possession or control any liquor on a thoroughfare not in a sealed container;

unless the person has a permit and complies with any requirement of the *Liquor Licensing Act 1988*.

Division 2 - Vehicle crossing

Subdivision 1 - Temporary crossings

2.4 Permit required

- (1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains and footpath, where –
- (a) a crossing does not exist; or
 - (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.

- (2) The “person responsible for the works” in subsection (1) is to be taken to be –
 - (a) the builder named on the building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960*, if one has been issued in relation to the works; or
 - (b) the registered proprietor of the lot, if no building licence has been issued under the *Local Government (Miscellaneous Provisions) Act 1960* in relation to the works.
- (3) If the local government approves an application for a permit for the purpose of subsection (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

Subdivision 2 - Redundant vehicle crossings

2.5 Removal of redundant crossing

- (1) Where works on a lot will result in a crossing no longer giving access to a lot, the crossing is to be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of the local government.
- (2) The local government may give written notice to the owner or occupier of a lot requiring her or him to –
 - (a) remove any part of or all of a crossing which does not give access to the lot; and
 - (b) reinstate the kerb, drain, footpath, verge and any other part of the thoroughfare, which may be affected by the removal,

within the period of time stated in the notice, and the owner or occupier of the lot shall comply with that notice.

Division 3 - Verge treatments

Subdivision 1 - Preliminary

2.6 Interpretation

In this Division, unless the context otherwise requires -

"acceptable material" means any material which will create a hard surface as approved by an authorised person.

Subdivision 2 - Permissible verge treatments

2.7 Permissible verge treatments

- (1) An owner or occupier of land which abuts a verge may on that part of the verge directly in front of her or his land install a permissible verge treatment.
- (2) The permissible verge treatments are –
 - (a) reticulation pipes and sprinklers;
 - (b) the planting and maintenance of a lawn;

- (c) the planting and maintenance of a garden provided that –
 - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare; and
 - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb;
- (d) the installation of an acceptable material; or
- (e) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) of an acceptable material, and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (b) or (c).

2.8 Only permissible verge treatments to be installed

A person shall not install or maintain a verge treatment which is not a permissible verge treatment.

2.9 Obligations of owner or occupier

An owner or occupier who installs or maintains a permissible verge treatment shall -

- (a) keep the permissible verge treatment in a good and tidy condition and ensure, where the verge treatment is a garden or lawn, that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment;
- (b) not place any obstruction on or around the verge treatment; and
- (c) not disturb a footpath on the verge.

2.10 Notice to owner or occupier

The local government may give a notice in writing to the owner or the occupier of a lot abutting a verge to make good, within the time specified in the notice, any breach of a provision of this Division.

Subdivision 3 - Existing verge treatments

2.11 Transitional provision

(1) In this section –

"former provisions" means the local law of the local government which permitted certain types of verge treatments, whether with or without the consent of the local government, and which was repealed by this local law.

(2) A verge treatment which –

- (a) was installed prior to the commencement day; and
- (b) on the commencement day is a type of verge treatment which was permitted under and complied with the former provisions,

is to be taken to be a permissible verge treatment for so long as the verge treatment remains of the same type and continues to comply with any former provisions.

Subdivision 4 - Public works

2.12 Power to carry out public works on verge

Where the local government or an authority empowered to do so under a written law disturbs a verge, the local government or the authority -

- (a) is not liable to compensate any person for that disturbance;
- (b) may backfill with sand, if necessary, any garden or lawn; and
- (c) is not liable to replace or restore any –
 - (i) verge treatment and, in particular, any plant or any acceptable material or other hard surface; or
 - (ii) sprinklers, pipes or other reticulation equipment.

Division 4 - Property numbers

Subdivision 1 - Preliminary

2.13 Interpretation

In this Division, unless the context requires otherwise -

"**Number**" means a number of a lot with or without an alphabetical suffix indicating the address of the lot by reference to a thoroughfare.

Subdivision 2 - Assignment and marking of numbers

2.14 Assignment of numbers

The local government may assign a Number to a lot in the district and may assign another Number to the lot instead of that previously assigned.

Division 5 - Fencing

2.15 Public place – Item 4(1) of Division 1, Schedule 3.1 of Act

The following places are specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act –

- (a) a public place, as that term is defined in section 1.2; and
- (b) local government property.

Division 6 - Signs erected by the local government

2.16 Signs

- (1) A local government may erect a sign on a public place specifying any conditions of use which apply to that place.
- (2) A person shall comply with a sign erected under subsection (1).
- (3) A condition of use specified on a sign erected under subsection (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

2.17 Transitional

Where a sign erected on a public place has been erected under a local law of the local government repealed by this local law, then on and from the commencement day, it is to be taken to be a sign erected under section 2.16 if –

- (a) the sign specifies a condition of use relating to the public place which gives notice of the effect of a provision of this local law; or
- (b) the condition of use specified is not inconsistent with any provision of this local law.

Division 7 - Driving on a closed thoroughfare

2.18 No driving on closed thoroughfare

- (1) A person shall not drive or take a vehicle on a closed thoroughfare unless –
 - (a) the person does so in accordance with any limits or exceptions specified in an order closing the thoroughfare; or
 - (b) the person has first obtained a permit.
- (2) In this section –

"closed thoroughfare" means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

PART 3 – OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1 - Animals and vehicles

3.1 Interpretation

In this Division –

“commercial vehicle” means –

- (a) a vehicle designed or used for transportation or haulage of goods or any other commercial purpose and having a load capacity exceeding 1.5 tonnes, or a vehicle designed or used for the carriage of more than ten passengers, or a vehicle designed or used for industrial purposes, or an earthmoving vehicle or equipment, or a tow truck or a prime mover;
- (b) a semi-trailer or road train as defined by the *Road Traffic Act 1974* (as amended); and
- (c) an agricultural vehicle or implement, a caravan or a trailer with a load capacity exceeding 1.5 tonnes;

“motor vehicle” has the meaning given to it in the *Road Traffic Act 1974* (as amended), other than a commercial vehicle as defined herein;

“park” means to permit a vehicle, whether attended or not to remain stationary and “parking” has a correlative meaning.

3.2 Leaving animal or vehicle in public place or on local government property

- (1) A person shall not leave an animal or a vehicle, or any part of a vehicle, in a public place unless that person has first obtained a permit or is authorised to do so under a written law.
- (2) A person will not contravene subsection (1) by
 - (a) leaving an animal if the animal is secured or tethered for a period not exceeding 1 hour; or

- (b) leaving a vehicle if the vehicle is left for a period not exceeding 24 hours;

provided the vehicle or animal is not, in the opinion of an authorised person, obstructing the use of the place or property.

3.3 Limitation on parking of vehicles with Gross Vehicle Mass in excess of 4.5 tonnes on carriageway.

A person shall not park a vehicle having a gross vehicle mass in excess of 4.5 tonnes on a carriage way for more than two hours consecutively.

3.4 Limitation on parking of over length vehicles on carriageway

A person shall not park a vehicle or any combination of vehicles that together with anything in or on that vehicle is more than 7.5 metres in length, on a carriageway for more than two hours consecutively.

3.5 Parking commercial vehicles on verges

- (1) A person shall not park a commercial vehicle on a verge -
 - (a) for more than two hours consecutively;
 - (b) within ten metres of an intersection for any period of time; and
 - (c) for the purpose of effecting repairs or otherwise servicing or cleaning the vehicle, other than the minimum repairs necessary to enable the vehicle to be moved to a place other than a thoroughfare.
- (2) It is not an offence under subsection (1) where-
 - (a) the commercial vehicle is parked while the driver of the vehicle is carrying out any building, renovation, repair or similar work on a lot adjoining the verge provided that the driver does not reside on that lot; or
 - (b) the commercial vehicle is parked within ten metres of an intersection if it is parked for less than two hours upon the verge opposite a T junction.

3.6 Parking motor vehicle on verges

A person shall not park a motor vehicle on a verge –

- (a) if that vehicle is not licensed under the Road Traffic Act; or
- (b) for the purpose of effecting repairs to it, other than the minimum repairs necessary to enable the vehicle to be moved to a place other than a thoroughfare.

3.7 Prohibitions relating to animals

- (1) In subsection (2), "owner" in relation to an animal includes –
 - (a) an owner of it;
 - (b) a person in possession of it;
 - (c) a person who has control of it; and
 - (d) a person who ordinarily occupies the premises where the animal is permitted to stay.
- (2) An owner of an animal shall not –
 - (a) allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;

- (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place; or
 - (c) train or race the animal on a thoroughfare.
- (3) An owner of a horse shall not lead, ride or drive a horse –
- (a) on a thoroughfare in a built-up area unless that person does so under a permit or under the authority of a written law; or
 - (b) on a footpath so as to cause danger to pedestrians or damage to the footpath.

Division 2 - Shopping trolleys

3.8 Interpretation

In this Division –

"**retailer**" means a proprietor of a shop in respect of which shopping trolleys are provided for the use of customers of the shop; and

"**shopping trolley**" means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

3.9 Shopping trolley to be marked

A retailer shall clearly mark its name or its trading name on any shopping trolley made available for the use of customers.

3.10 Person not to leave trolley in public place

A person shall not leave a shopping trolley in a public place other than in an area set aside for the storage of shopping trolleys.

3.11 Retailer to remove abandoned trolley

(1) If a shopping trolley is found in a public place, other than in an area set aside for the storage of shopping trolleys, the local government may advise (verbally or in writing) a retailer whose name is marked on the trolley of the location of the shopping trolley.

(2) A retailer shall remove a shopping trolley within 24 hours of being so advised under subsection (1).

3.12 Retailer taken to own trolley

In the absence of any proof to the contrary, a shopping trolley is to be taken to belong to a retailer whose name is marked on the trolley.

PART 4 - TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - Stallholders and traders

Subdivision 1 - Preliminary

4.1 Interpretation

In this Division, unless the context otherwise requires -

"Competition Principles Agreement" means the Competition Principles Agreement executed by each State and Territory of the Commonwealth and the Commonwealth of Australia on 11 April 1995;

"public place" includes -

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law.

"stall" means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire;

"stallholder" means a person in charge of a stall;

"stallholder's permit" means a permit issued to a stallholder;

"trader" means a person who carries on trading;

"trader's permit" means a permit issued to a trader; and

"trading" includes –

- (a) the selling or hiring of, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of –
 - (i) offering them for sale or hire;
 - (ii) inviting offers for their sale or hire;
 - (iii) soliciting orders for them; or
 - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not the places are public places, and –
 - (i) offering goods or services for sale or hire;
 - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services; or
 - (iii) carrying out any other transaction in relation to goods or services,

but does not include –

- (d) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;
- (e) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (f) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and

- (g) the selling or hiring or the offering for sale or hire of –
 - (i) goods by a person who represents a manufacturer of the goods; or
 - (ii) services by a person who represents a provider of the services,which are sold directly to consumers and not through a shop.

Subdivision 2 - Permits

4.2 Stallholder's permit

- (1) A person shall not conduct a stall on a public place unless that person is –
 - (a) the holder of a valid stallholder's permit; or
 - (b) an assistant specified in a valid stallholder's permit.
- (2) Every application for a stallholder's permit shall –
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the stall, as well as their names and addresses if already engaged;
 - (c) specify the proposed location of the stall;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
 - (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
 - (f) be accompanied by an accurate plan and description of the proposed stall.

4.3 Trader's permit

- (1) A person shall not carry on trading unless that person is –
 - (a) the holder of a valid trader's permit; or
 - (b) an assistant specified in a valid trader's permit.
- (2) Every application for a trader's permit shall –
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
 - (c) specify the location or locations in which the applicant proposes to trade;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
 - (e) specify the proposed goods or services which will be traded; and

- (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.
- (3) The conditions subject to which the local government may approve an application for a trader's permit include that the permit holder is permitted to remain at a particular location for as long as there is a customer making a purchase, but if there is no customer making a purchase the permit holder must move on from that location within a reasonable time of the last purchase having been made.

4.4 Relevant considerations in determining application for permit

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to –
- (a) any relevant policies of the local government;
 - (b) the desirability of the proposed activity;
 - (c) the location of the proposed activity;
 - (d) the principles set out in the Competition Principles Agreement; and
 - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds –
- (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
 - (b) that the applicant is not a desirable or suitable person to hold a permit; or
 - (c) such other grounds as the local government may consider to be relevant in the circumstances of the case.

4.5 Conditions of permit

- (1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include –
- (a) the place, the part of the district, or the thoroughfare to which the permit applies;
 - (b) the days and hours during which a permit holder may conduct a stall or trade;
 - (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;
 - (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
 - (e) the number of persons and the names of persons permitted to conduct a stall or trade;
 - (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
 - (g) whether and under what terms the permit is transferable;

- (h) any prohibitions or restrictions concerning the -
 - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder;
 - (ii) the use of amplifiers, sound equipment and sound instruments;
 - (iii) the use of signs; and
 - (iv) the use of any lighting apparatus or device;
 - (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
 - (j) the care, maintenance and cleansing of the stall or any structure or vehicle used for trading and the place of the stall or any structure;
 - (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
 - (l) the acquisition by the stallholder or trader of public risk insurance;
 - (m) the period for which the permit is valid; and
 - (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.
- (2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorise another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

4.6 Exemptions from requirement to pay fee or to obtain a permit

- (1) In this section –

"charitable organisation" means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium; and

"commercial participant" means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.

- (2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on –
- (a) on a portion of a public place adjoining the normal place of business of the applicant; or
 - (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.

- (3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

Subdivision 3 - Conduct of stallholders and traders

4.7 Conduct of stallholders and traders

- (1) A stallholder while conducting a stall or a trader while trading shall –
- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
 - (b) not display a permit unless it is a valid permit; and
 - (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.
- (2) A stallholder or trader shall not –
- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
 - (b) act in an offensive manner;
 - (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
 - (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

Division 2 - Outdoor eating facilities on public places

4.8 Interpretation

In this Division -

"Facility" means an outdoor eating facility or establishment on any part of a public place, but does not include such a facility or establishment on private land;

"permit holder" means the person to whom a permit has been issued for the purpose of section 4.9; and

"public place" has the meaning given to it in section 4.1.

4.9 Permit required to conduct Facility

A person shall not establish or conduct a Facility without a permit.

4.10 Matters to be considered in determining application

In determining an application for a permit for the purpose of section 4.9, the local government may consider in addition to any other matter it considers relevant, whether or not -

- (a) the Facility is conducted in conjunction with and as an extension of food premises which abut on the Facility, and whether the applicant is the person conducting such food premises;

- (b) any abutting food premises are registered in accordance with the *Health Act 1911* and whether the use of the premises is permitted under the town planning scheme;
- (c) the Facility will comply with any local law made under section 172 of the *Health Act 1911*;
- (d) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (e) the Facility would -
 - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
 - (ii) impede pedestrian access; and
- (f) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

4.11 Obligations of permit holder

- (1) The permit holder for a Facility shall –
 - (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law and any local law made under section 172 of the *Health Act 1911*;
 - (b) ensure that the eating area is kept in a clean and tidy condition at all times;
 - (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times;
 - (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of any part of the public place arising from the conduct of the Facility; and
 - (e) be solely responsible for all rates and taxes levied upon the land occupied by the Facility.
- (2) Whenever, in the opinion of the local government, any work is required to be carried out to a Facility, the local government may give a notice to the permit holder for the Facility to carry out that work within the time limited by the notice.
- (3) In subsection (2), “work” includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

4.12 Removal of Facility unlawfully conducted

Where a Facility is conducted without a permit, or in contravention of a condition of a permit, any tables, chairs, umbrellas or other equipment may be removed by an authorised person and impounded in accordance with the Act.

4.13 Use of Facility by public

- (1) A person shall not occupy a chair or otherwise use the equipment in a Facility the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the Facility
- (2) A person shall leave a Facility when requested to do so by the permit holder.

4.14 Temporary removal of Facility may be requested

- (1) The permit holder for a Facility is to temporarily remove the Facility when requested to do so on reasonable grounds by an authorised person or a member of the Police Service or an emergency service in the event of an emergency.
- (2) The permit holder may replace the Facility removed under subsection (1) as soon as the person who directed her or him to remove it allows it to be replaced.

PART 5 - PERMITS

Division 1 – Applying for a permit

5.1 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subsection (2).
- (2) An application for a permit under this local law shall -
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant;
 - (c) provide the information required by the form; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The local government may require an applicant to give local public notice of the application for a permit.
- (5) The local government may refuse to consider an application for a permit which is not in accordance with subsection (2).

5.2 Decision on application for permit

- (1) The local government may –
 - (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.

- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.
- (4) Where a section of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the section does not limit the power of the local government to impose other conditions on the permit under subsection (1)(a).
- (5) Where a section of this local law refers to the grounds on which an application for a permit may be or is to be refused, the section does not limit the power of the local government to refuse the application for a permit on other grounds under subsection (1)(b).

Division 2 - Conditions

5.3 Conditions which may be imposed on a permit

The local government may approve an application for a permit subject to conditions relating to -

- (a) the payment of a fee;
- (b) the duration and commencement of the permit;
- (c) the commencement of the permit being contingent on the happening of an event;
- (d) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
- (e) the approval of another application for a permit which may be required by the local government under any written law;
- (f) the area of the district to which the permit applies;
- (g) where a permit is issued for an activity which will or may cause damage to a public place, the payment of a deposit or bond against such damage;
- (h) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government; and
- (i) the provision of an indemnity from the permit holder indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the use of the public place by the permit holder.

5.4 Imposing conditions under a policy

(1) In this section –

"policy" means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under section 5.2(1)(a).

- (2) Under section 5.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.
- (3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in section 5.2(2).
- (4) An application for a permit is to be taken not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.

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

5.5 Compliance with and variation of conditions

- (1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.
- (2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

Division 3 - General

5.6 Duration of permit

A permit is valid for one year from the date on which it is issued, unless it is –

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under section 5.10.

5.7 Renewal of permit

- (1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.
- (2) The provisions of –
- (a) this Part; and
 - (b) any other provision of this local law relevant to the permit which is to be renewed,
- shall apply to an application for the renewal of a permit *mutatis mutandis*.

5.8 Transfer of permit

- (1) An application for the transfer of a valid permit is to –
- (a) be made in writing;
 - (b) be signed by the permit holder and the proposed transferee of the permit;
 - (c) provide such information as the local government may require to enable the application to be determined; and
 - (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.
- (2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by –
- (a) an endorsement on the permit signed by the CEO; or
 - (b) issuing to the transferee a permit in the form determined by the local government.

- (4) Where the local government approves an application for the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

5.9 Production of permit

A permit holder is to produce to an authorised person her or his permit immediately upon being required to do so by that authorised person.

5.10 Cancellation of permit

- (1) Subject to section 6.1, a permit may be cancelled by the local government on any one or more of the following grounds –
- (a) the permit holder has not complied with a -
 - (i) condition of the permit; or
 - (ii) provision of any written law which may relate to the activity regulated by the permit; or
 - (b) if it is relevant to the activity regulated by the permit –
 - (i) the permit holder has become bankrupt, or gone into liquidation;
 - (ii) the permit holder has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager is appointed in relation to any part of the permit holder's undertakings or property.
- (2) On the cancellation of a permit the permit holder –
- (a) shall return the permit within ten (10) working days to the local government; and
 - (b) is to be taken to have forfeited any fees paid in respect of the permit.

PART 6 - OBJECTIONS AND APPEALS

6.1 Application of Part 9 Division 1 of the Act

When the local government makes a decision -

- (a) under section 5.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

PART 7 - MISCELLANEOUS NOTICES

7.1 Notice to redirect or repair sprinkler

Where a verge, lawn or a garden is being watered with a sprinkler which is on the verge, lawn or garden, in a manner which causes or may cause an inconvenience or obstruction to any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting the verge, lawn or garden, requiring the owner or the occupier or both to move or alter the direction of the sprinkler or other watering equipment.

7.2 Hazardous plants

- (1) Where a plant in a garden creates or may create a hazard for any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the garden to remove, cut, move or otherwise deal with that plant so as to remove the hazard.
- (2) Subsection (1) does not apply where the plant was planted by the local government.

7.3 Notice to remove thing unlawfully placed on thoroughfare

Where any thing is placed on a thoroughfare in contravention of this local law, the local government may by notice in writing to the owner or the occupier of the property which abuts on that portion of the thoroughfare where the thing has been placed, or such other person who may be responsible for the thing being so placed, require the relevant person to remove the thing.

PART 8 - ENFORCEMENT

Division 1 - Notices given under this local law

8.1 Offence to fail to comply with notice

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

8.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in section 8.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

Division 2 - Offences and penalties

Subdivision 1 - General

8.3 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) 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

8.4 Prescribed offences

- (1) An offence against a section 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 section 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 authorised 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.

8.5 Forms

Unless otherwise specified, 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

SECTION	DESCRIPTION	MODIFIED PENALTY \$
2.1(a)(i)	Planting hazardous plant	100
2.1(a)(ii)	Planting overheight plant near intersection	100
2.1(a)(iii)	Planting too close to carriageway	100
2.1(b)	Damaging lawn or garden	100
2.1(c)	Placing hazardous substance on footpath	100
2.1(d)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(e)	Playing games so as to impede vehicles or persons on thoroughfare	100
2.1(f)	Riding of bicycle, skateboard or similar device on mall or verandah of shopping centre	100
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	100
2.2(1)(b)	Throwing or placing anything on a verge without a permit	100
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	100
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	200
2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	200
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	300
2.2(1)(h)	Felling tree onto thoroughfare without a permit	100
2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	100
2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	300
2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	100
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	100
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	100
2.3	Consumption or possession of liquor on thoroughfare	100
2.4(1)	Failure to obtain permit for temporary crossing	200
2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	300
2.8(1)	Installation of verge treatment other than permissible verge treatment	200
2.9	Failure to maintain permissible verge treatment or placement of obstruction on verge	100
2.10	Failure to comply with notice to rectify default	100
2.16(2)	Failure to comply with sign on public place	100
2.18(1)	Driving or taking a vehicle on a closed thoroughfare	300
3.2(1)	Animal or vehicle obstructing a public place or local government property	100
3.3	Parking vehicles with GMV in excess of 4.5 tonnes for over two hours.	100
3.4	Parking over length vehicles in excess of two hours	100
3.5	Unlawfully parking commercial vehicle on verge	100
3.6	Unlawfully parking motor vehicle on verge	50
3.7(2)(a)	Animal on thoroughfare when not led, ridden or driven	100
3.7(2)(b)	Animal on public place with infectious disease	100
3.7(2)(c)	Training or racing animal on thoroughfare in built-up area	100
3.7(3)(a)	Horse led, ridden or driven on thoroughfare in built-up area	100
3.7(3)(b)	Horse led, ridden or driven on footpath so as to cause damage	100
3.8	Person leaving shopping trolley in public place other than trolley bay	100

3.9	Failure to mark a shopping trolley	100
3.11(2)	Failure to remove a shopping trolley	100
4.2(1)	Conducting of stall in public place without a permit	300
4.3(1)	Trading without a permit	300
4.7(1)(a)	Failure of stallholder or trader to display or carry permit	100
4.7(1)(b)	Stallholder or trader not displaying valid permit	100
4.7(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	100
4.7(2)	Stallholder or trader engaged in prohibited conduct	100
4.9	Establishment or conduct of outdoor eating facility without a permit	300
4.11	Failure of permit holder of outdoor eating facility to comply with obligations	100
4.13(1)	Use of equipment or outdoor eating facility without purchase of food or drink from Facility	50
4.13(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	50
5.5	Failure to comply with a condition of a permit	100
5.9	Failure to produce permit on request of authorised person	100
5.10(2)	Failure to return permit	100
8.1	Failure to comply with notice given under local law	100

Adopted at an ordinary meeting of the Council of the Shire of Mundaring held on the 24th day of February 2004.

Dated the 24th day of February 2004.

The Common Seal of the **Shire of**)
Mundaring was hereunto affixed)
by authority of Council.)

M N Williams
Chief Executive Officer
(or his delegate)

T S Pashley
Authorised Officer