

**LOCAL GOVERNMENT ACT 1995
CAT ACT 2011**

SHIRE OF ESPERANCE

CAT LOCAL LAW 2024

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CAT LOCAL LAW 2024

Under the powers conferred on it by the *Cat Act 2011* and the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Esperance resolved on 27 February 2024 to make the following local law.

PART 1—PRELIMINARY

1.1 Short Title

This local law may be cited as the Shire of Esperance *Cat Local Law 2024*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The Shire of Esperance *Cat Local Law 2022* published in the *Government Gazette* on 8 March 2023 is repealed.

1.5 Definitions

In this local law unless the context otherwise requires—

Act means the *Cat Act 2011*;

applicant means the occupier of the premises who makes an application for a permit under this local law;

authorised person means a person appointed by the local government to perform the functions conferred on an authorised person under this local law;

cat means an animal of the species *felis catus* or a hybrid of that species;

cat management facility means—

- (a) a facility operated by a local government that is, or may be, used for keeping cats; or
- (b) a facility for keeping cats that is operated by a person or body prescribed; or
- (c) a facility for keeping cats that is operated by a person or body approved in writing by a local government;

cattery means any premises where more than 3 cats are boarded, housed or trained temporarily, usually for profit, and where the occupier of the premises is not the ordinary keeper of the cats;

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;

grouped dwelling (commonly referred to as a duplexes, villas or townhouses) means a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above the other, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property.

local government means the Shire of Esperance;

multiple dwelling (often called flats, apartments or units) means a dwelling in a group of more than one dwelling on a lot where any part of a dwelling is vertically above part of any other but—

- (a) does not include a grouped dwelling; and
- (b) includes any dwellings above the ground floor in a mixed use development.

nuisance means behaviour that includes where a cat—

- (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 of his or her ownership or occupation of land;
- (c) interference which causes material damage to land or other property on the land affected by the interference; or
- (d) injurious or dangerous to the health of any person or domestic animal.

owner in relation to a cat means any of the following persons—

- (a) the owner of the cat as defined in the Act;
- (b) a person by whom the cat is ordinarily kept;
- (c) a person who has or appears to have immediate custody or control of the cat;
- (d) a person who keeps the cat, or has the cat in her or his possession for the time being;
- (e) a person who occupies any premises in which a cat is ordinarily kept or ordinarily permitted to live; or
- (f) a permit holder of a permit which relates to the cat;
- (g) the holder of an exemption issued in relation to the cat.

permit means a permit issued by the local government under clause 3.6;

permit holder means a person who holds a valid permit under clause 3.6;

person liable for the control of means each of the following in relation to a cat—

- (a) the registered owners of the cat;
- (b) the owner of the cat;
- (c) the occupier of any premises where the cat is ordinarily kept or ordinarily permitted to live; or
- (d) a person who has the cat in their possession or under their control, but does not include a registered veterinary surgeon, or a person acting on their behalf, in the course of their professional practice;

premises includes the following—

- (a) land (whether or not vacant);
- (b) the whole or part of a building or structure (whether of a permanent or temporary nature); and
- (c) a vehicle.

public place includes any place to which the public lawfully has access;

RSPCA means the Royal Society for the Prevention of Cruelty to Animals (Inc) of Western Australia;

Schedule means a schedule to this local law;

Scheme means a local planning scheme of the local government made by it under the *Planning and Development Act 2005* and its antecedents; and

single dwelling means a house that stands alone on its own parcel of land.

PART 2—CAT CONTROL

2.1 Cat not to be a nuisance

- (1) An owner must not allow a cat to be or create a nuisance.
- (2) Where in the opinion of an authorised person, a cat is creating a nuisance, the local government may give written notice to the owner of the cat requiring that person to abate the nuisance.
- (3) When a nuisance has occurred and a notice to abate the nuisance is given, the notice remains in force for the period specified by the local government in the notice which must not exceed twenty eight (28) days.
- (4) A person given a notice to abate the nuisance must comply with the notice within the period specified in the notice.

2.2 Cat prohibited areas

- (1) Unless in accordance with written authorisation from the local government a cat must not be in a cat prohibited area, as provided for in Schedule 1, at any time.
- (2) If a cat is in a cat prohibited area contrary to subclause (1), the owner of the cat commits an offence.
- (3) An authorised person may seize and remove, or direct the seizure and removal of a cat from a cat prohibited area, pursuant to the Act.

PART 3—PERMITS FOR KEEPING CATS

3.1 Interpretation

In this Part, and for the purposes of applying the definition of *cattery* in Part 3— *cat* does not include a cat less than 6 months old.

3.2 Cats for which a permit is required

- (1) Subject to clause 3.2(2) a person is required to have a permit—
 - (a) to keep more than two(2) cats on any single dwelling or grouped dwelling premises to a maximum of six (6) cats;
 - (b) to keep more than two (2) cats on any multiple dwelling property to a maximum of three (3) cats; or
 - (c) to use any premises as a cattery.
- (2) A permit is not required under clause 3.2(1) if the premises concerned are—

- (a) a refuge of the RSPCA or any other animal welfare organisation;
- (b) a cat management facility which has been approved by the local government;
- (c) a veterinary surgery; or
- (d) a pet shop;

3.3 Application for permit

- (1) An application for a permit under clause 3.2 must be—
 - (a) made in writing by an occupier of premises in relation to those premises;
 - (b) in a form approved by the local government, describing and specifying the number of cats to be kept on the premises;
 - (c) accompanied by a brief reason and justification for the request;
 - (d) accompanied by the plans of the premises to which the application relates to the specification and satisfaction of the local government;
 - (e) accompanied by the consent in writing of the owner of the premises, where the occupier is not the owner of the premises to which the application relates; and
 - (f) accompanied by the application fee for the permit determined by the local government from time to time.
- (2) In determining an application for a permit pursuant to subclause (1) the local government may consider such matters as it deems appropriate and may request the applicant—
 - (a) consult with nearby landowners and/or occupiers;
 - (b) advise nearby landowners and/or occupiers that they may make submissions to the local government on the application for a permit within fourteen (14) days of receiving that advice, before determining the application for the permit; or
 - (c) provide such further or other information as deemed necessary in order for it to make a determination.

3.4 Refusal to determine application

The local government may refuse to determine an application for a permit if it is not made in accordance with clauses 3.3(1) and 3.3(2).

3.5 Factors relevant to determination of application

- (1) In determining an application for a permit the local government may have regard to—
 - (a) the reasons and justification provided for the request;
 - (b) the physical suitability of the premises for the proposed use;
 - (c) the suitability of the zoning of the premises under any Scheme which applies to the premises for the use;
 - (d) the environmental sensitivity and general nature of the location surrounding the premises for the proposed use;
 - (e) the structural suitability of any enclosure in which any cat is to be kept;
 - (f) the likelihood of a cat causing a nuisance, inconvenience or annoyance to the occupiers of adjoining land;
 - (g) the likely effect on the amenity of the surrounding area of the proposed use;
 - (h) the likely effect on the local environment, including any pollution or other environment damage which may be caused by the use;
 - (i) any submissions received under clause 3.5(2)(a) within the time specified in clause 3.5(2)(b); and
 - (j) such other factors which the local government may consider to be relevant in the circumstances of the particular case.
- (2) The local government may require an applicant to—
 - (a) consult with other nearby landowners; and
 - (b) advise other adjoining landowners that they may make submissions to the local government on the application for the permit within fourteen (14) days of receiving that advice, before determining the application for the permit.
- (3) The local government may specify the extent of the consultation with nearby residents, as specified in clause 3.5(2)(a) and may specify which properties should be consulted.

3.6 Decision on application

- (1) The local government may—
 - (a) approve an application for a permit, as it was submitted, in which case it must approve it subject to the conditions in clause 3.7 and may approve it subject to any other conditions it considers fit;
 - (b) approve an application, but specify an alternative number of cats permitted to be housed at the address; or
 - (c) refuse to approve an application for a permit.

- (2) If the local government approves an application under subclause (1), then it must issue to the applicant a permit in the form determined by the CEO.
- (3) If the local government refuses to approve an application under subclause (1), then it must advise the applicant accordingly in writing.

3.7 Conditions

- (1) Every permit is issued subject to the following conditions—
 - (a) each cat kept on the premises to which the permit relates must comply with the requirements of this local law;
 - (b) the permit holder will provide adequate space for the exercise of the cats; and
 - (c) the premises must be maintained in good order and in a clean and sanitary condition.
- (2) In addition to permit conditions issued under this clause, additional conditions may be applied, as the local government considers appropriate.
- (3) The permit holder who fails to comply with a condition of a permit commits an offence.

3.8 Duration of permit

Unless otherwise specified, in a condition on a permit, a permit commences on the date of issue and is valid until—

- (a) it is revoked;
- (b) the cat is deceased; or
- (c) the permit holder ceases to reside at the premises to which the permit relates.

3.9 Revocation

The local government may revoke a permit if the permit holder fails to observe any provision of this local law or a condition of a permit.

3.10 Permit not transferable

A permit is not transferable either in relation to the permit holder or the premises.

3.11 Permit to be kept at the premises and available for view

A permit issued by the local government must be kept at the premises to which it applies and must be provided to an authorised person on demand. In the case of a registered cattery, the permit must be displayed in a prominent place within the premises.

PART 4—FEES, CHARGES AND COSTS

4.1 Fees, Charges and Costs

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

- (a) the charges to be levied under section 31(1)(a) of the Act relating to the removing and impounding of a cat;
- (b) the charges to be levied under section 31(1)(b) of the Act relating to keeping and caring for a cat;
- (c) the costs incurred by the operator of a cat management facility under section 31(1)(c) of the Act for the microchipping of a cat prior to release if so required under section 33 of the Act;
- (d) the cost incurred by the operator of a cat management facility under section 31(1)(d) of the Act for the sterilisation of a cat if so required under section 33 of the Act; and
- (e) the costs of the destruction and the disposal of a cat under section 34 of the Act.

PART 5—OBJECTIONS AND REVIEW

5.1 Objection and appeal rights

Any person who is aggrieved by the conditions imposed in relation to a permit, the revocation of a permit, or by the refusal of the local government to grant a permit may object to or appeal against the decision pursuant to the *Local Government Act 1995* (Part 9, Division 1—Objections and Review).

PART 6—ENFORCEMENT

6.1 Offences

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.

6.2 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 62(2) of the Act.
- (2) The amount appearing in the final column of Schedule 2 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

6.3 Forms

- (1) The issue of infringement notices, their withdrawal and the payment of modified penalties are dealt with in Division 4 of Part 4 of the Act.
- (2) An infringement notice given under section 62 of the Act is to be in the form of Form 6 of Schedule 1 of the *Cat Regulations 2012*.
- (3) A notice sent under section 65 of the Act withdrawing an infringement notice is to be in the form of Form 7 of Schedule 1 of the *Cat Regulations 2012*.

6.4 Serving of infringement notices

- (1) An infringement notice served under section 62 of the Act or this local law may be given to a person by way of one of the following
 - (a) personally;
 - (b) by registered mail addressed to the person;
 - (c) by leaving it for the person at her or his address; or
 - (d) by email.

SCHEDULE 1—PLACES WHERE CATS ARE PROHIBITED ABSOLUTELY

[Clause 2.3]

Table 1—Locations where cats are prohibited absolutely

RESERVE NUMBER	DESCRIPTION
27318	Esperance Foreshore
27626	Skroly Park
41097	Tjaltjraak Boodja Park
23043	Lake Monjingup Reserve
31112, 41141	Dempster Head
31540 25891	West Beach and Blue Haven
35201	Bandy Creek
32337	Munglinup Beach
40943	Quagi Beach
39409	Alexander Bay
40772	Kennedys Beach
3805	Israelite Bay
3473	Esperance Cemetery
4181	Common
24284	Sand Reserve
38227	Esperance Golf Club
28099	Newtown Oval
42818	Pink Lake Reserve
33660	Lot 1967 Stearne Road

SCHEDULE 2—MODIFIED PENALTIES

[Clause 6.2]

Table 2—Modified Penalties

Item	Clause	Offence	Modified Penalty
1	2.1(4)	Cat not to be a nuisance	\$200
2	2.2	Cat in cat prohibited area	\$200
3	3.2(1)(a) & (b)	Keeping more than prescribed number of cats without a permit	\$200
4	3.2(1)(c)	Keeping a cattery without a permit	\$200
5	3.7(3)	Failure to comply with permit condition	\$200

SCHEDULE 3—FORMS

[Clause 3.3(1)(b)]

**APPLICATION FOR A PERMIT TO KEEP CATS
SHIRE OF ESPERANCE *CAT LOCAL LAW 2022*
APPLICATION FOR A PERMIT TO KEEP CATS**

I/we (full name).....
of (postal address).....
(telephone number)
(facsimile number)..... (E-mail address).....
Apply for a permit to keep cats at (address of premises).....

For (number and breed of cats).....
(insert name of person)..... will be residing at the premises on and from (insert date)
.....

The application must be—

- (a) accompanied by a brief reason and justification for the request;
- (b) accompanied by the plans of the premises to which the application relates to the specification and satisfaction of the local government;
- (c) accompanied by the consent in writing of the owner of the premises, where the occupier is not the owner of the premises to which the application relates; and
- (d) accompanied by the application fee for the permit determined by the local government from time to time.

Signature of applicant.....

Date.....

OFFICE USE ONLY

Application fee paid on..... (Date)

Dated this 11th day of March 2024.

The Common Seal of the Shire of Esperance was hereunto affixed by the authority of a resolution of the Council in the presence of—

RONALD CHAMBERS, Shire President.
SHANE BURGE, Chief Executive Officer.
