

LOCAL GOVERNMENT ACT 1995

CITY OF CANNING

**LOCAL GOVERNMENT PROPERTY
AND PUBLIC PLACES LOCAL LAW 2021**

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LOCAL GOVERNMENT ACT 1995

CITY OF CANNING

LOCAL GOVERNMENT PROPERTY AND PUBLIC PLACES LOCAL LAW 2021

Under the power conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Canning resolved on 21 September 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Title

This is the *City of Canning Local Government Property and Public Places Local Law 2021*.

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

Parts III, IV, V, VII, IX, X, XI, XII and XVI of the *City of Canning Consolidated Local Laws*, published in the *Government Gazette* on 31 March 2000, are repealed.

1.5 Terms used

In this local law, unless the context otherwise requires—

Act means the *Local Government Act 1995*;

advertising sign means a sign used for the purpose of advertisement or to draw attention to a product, business, person or event and includes a home open sign, a garage sale sign, a display home sign, an election sign and a portable sign;

alfresco dining area means an area in which tables, chairs and other temporary structures are provided for the purpose of the supply of food or beverages or both to the public or the consumption of food or beverages or both by the public;

animal means any living thing that is not a human being or plant;

authorised person means a person appointed under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

Building Code of Australia means the Building Code of Australia which is volumes 1 and 2, as amended from time to time, of the National Construction Code series published by, or on behalf of, the Australian Building Codes Board;

carriageway has the meaning in the *Road Traffic Code 2000*;

CEO means the Chief Executive Officer of the local government;

commencement day means the day on which this local law comes into operation under clause 1.2;

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;

detrimental to the property, in relation to local government property, includes—

- (a) removing any thing from the local government property such as a rock, plant, fixture, fitting, chattel, equipment or furniture provided for the use, enjoyment or safety of any person;
- (b) destroying, defacing or damaging a building or any thing on the local government property, such as a plant, fixture, chattel, equipment or furniture provided for the use, enjoyment or safety of any person; and
- (c) causing environmental harm or nuisance to or on the local government property;

district means the district of the local government;

election sign means a sign which advertises any aspect of a forthcoming Federal, State or Local Government election;

fauna means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes, in relation to any such animal—

- (a) any class of animal or individual members;
- (b) the eggs or larvae; or
- (c) the carcass, skin, plumage or fur;

Food Act means the *Food Act 2008*;

food business has the meaning in the *Food Act*;

garage sale sign means a portable free standing sign used to direct persons to a garage sale at a residential premises;

home open sign means a portable free standing sign used to direct persons to a home for sale that is open for inspection by the public;

intersection has the meaning in the *Road Traffic Code 2000*;

local government means the City of Canning;

local government property means anything—

- (a) which belongs to, is owned by or is under the care control and management of the local government;
 - (b) which is an “otherwise unvested facility” within section 3.53 of the Act but does not include a thoroughfare; or
 - (c) of which the local government is the management body under the *Land Administration Act 1997*;
- but does not include a thoroughfare.

local public notice means notice given in accordance with the procedure set out in section 1.7 of the Act;

lot has the meaning given to it in the *Planning and Development Act 2005*;

nuisance means—

- (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 common law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

occupier has the meaning in the Act, but does not include the local government;

owner has the meaning in the Act;

path has the meaning in the *Road Traffic Code 2000*;

permissible verge treatment has the meaning in clause 4.5;

permit means a permit issued under this local law;

permit holder means a person who holds a valid permit;

portable sign means a free standing portable advertising sign not permanently attached to a structure or fixed to the ground or pavement, and includes an ‘A’ frame sign;

promotional activity means the advertising or promotion of, or raising of funds for, a particular group, product or service;

public place includes a thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include—

- (a) premises on private property from which trading is lawfully conducted under a written law; or
- (b) local government property;

registered food business has the meaning in the Food Act and applies to a food business that is registered by the local government in accordance with the Food Act;

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

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

shopping trolley means a container or receptacle on wheels provided by a retailer to enable a person to transport goods;

smoke has the meaning in the *Tobacco Products Control Act 2006*;

street means any highway, thoroughfare or land used for vehicular or pedestrian traffic, and includes all the land lying between property lines, including the verge and path;

street number means a number or numbers, with or without an alphabetical suffix, assigned to a property to identify the address of the property by reference to a street;

street tree means a tree or tall plant that has a wooden trunk and branches that grow from its upper part, planted or self-sown in the street, of an appropriate species and in an appropriate location, as determined by the local government, for the purpose of contributing to the streetscape;

thoroughfare has the meaning in the Act, but does not include a private thoroughfare which is not under the management or control of the local government;

tobacco product has the meaning in the *Tobacco Products Control Act 2006*;

trading means—

- (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 or on local government property; or
- (b) displaying goods in a public place or local government property 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 includes the setting up of a stall, or the conducting of a business at a stall;

vehicle includes—

- (a) each conveyance and each object capable of being propelled or drawn on wheels, tracks or otherwise, including an off-road vehicle; and
- (b) an animal being ridden or driven,
but excludes—
 - (c) a wheelchair or any device designed for use by a physically impaired person on a path;
 - (d) a pram, a stroller or a similar device;
 - (e) a bicycle or wheeled recreational device;
 - (f) a shopping trolley; and
 - (g) a boat;

verge means that part of a thoroughfare that is between the carriageway and a lot which abuts the thoroughfare and includes a nature strip.

1.6 Meaning of 'on'

In this local law—

- (a) a reference to 'on local government property' or to 'in local government property' includes 'on or in local government property'; and
- (b) a reference to 'on a public place' or to 'in a public place' includes 'on or in a public place'.

1.7 Transitional

A permit, licence, consent or authorisation issued in accordance with a local law that is repealed under clause 1.4—

- (a) is taken to be a permit granted under this local law;
- (b) is to be valid for the period specified on the permit, licence, consent or authorisation; and
- (c) may be earlier cancelled or suspended in accordance with this local law.

1.8 Application as to assistance animals

This local law is subject to any written law and any law of the Commonwealth about an **assistance animal** as defined in section 9(2) of the *Disability Discrimination Act 1992* (Cth).

1.9 Overriding power to hire and agree

Despite anything to the contrary in this local law, the CEO or an authorised person, on behalf of the local government, may—

- (a) hire local government property to any person; or
- (b) enter into an agreement with any person regarding the use of any local government property.

PART 2—ACTIVITIES ON LOCAL GOVERNMENT PROPERTY

2.1 Activities needing a permit

(1) A person must not without a permit—

- (a) subject to subclause (3), hire local government property;
- (b) erect on local government property a structure for public amusement or for any other performance, whether for gain or otherwise;
- (c) erect a building on local government property;
- (d) make an excavation on, erect a fence on or remove a fence from, local government property;
- (e) deposit or store any thing on local government property;
- (f) camp on or lodge at local government property for the purpose of sleeping on local government property;
- (g) teach, coach or train for profit a person, animal or dog on local government property;
- (h) conduct a function, or public event or undertake any promotional activity, on local government property;
- (i) light a fire on local government property except in a facility provided for that purpose;

- (j) carry on trading on local government property unless the trading is conducted—
 - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
 - (ii) by a person who has a permit to carry on trading on local government property under any written law;
 - (k) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
 - (i) drive or ride or take any vehicle on to local government property; or
 - (ii) park or stop any vehicle on local government property;
 - (l) advertise anything by any means on local government property.
- (2) The CEO or an authorised person may exempt a person from compliance with subclause (1).
- (3) The CEO or an authorised person may exempt specified local government property or a specified class of local government property from the application of subclause (1)(a).

2.2 Application for a permit to hire local government property

- (1) The local government may hire local government property to a person who makes an application for a permit for the hire of local government property under Part 8.
- (2) The local government may—
- (a) determine that the requirements of this local law do not apply to the hiring of specified local government property or a specified class of local government property; and
 - (b) on the application of a person seeking a permit, waive the requirement to pay a hire fee or any part of a hire fee.

PART 3—BEHAVIOUR ON LOCAL GOVERNMENT PROPERTY

Division 1—Behaviour on and Interference with Local Government Property

3.1 Behaviour which interferes with others

A person must not, on local government property, behave in a manner which is likely to or does, interfere with, interrupt or disturb the enjoyment of a person who might use the property or who is using the property.

3.2 Behaviour detrimental to property

A person must not behave in or on local government property in a way which is or might be detrimental to the property.

3.3 Taking or injuring any fauna

A person must not take, injure or kill, or attempt to take, injure or kill, any fauna which is on or above any local government property unless that person is authorised under a written law to do so.

3.4 No smoking

- (1) In this clause—

premises means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

- (2) A person must not smoke within a 10 metre radius of any entrance, exit or aperture of premises on local government property.

3.5 Entry to local government property

A person, other than an authorised person performing a function or a contractor of the local government carrying out a contracted duty, must not—

- (a) enter or remain on any local government property except on those days and during those times when access is available to the public; or
- (b) enter any place that has been fenced off or closed to the public.

3.6 Refusal of entry to local government property

- (1) An authorised person may refuse to allow entry, or suspend admission, to any local government property to any person whom he or she reasonably suspects has behaved in a manner contrary to the provisions of this Part.

(2) A refusal or suspension under subclause (1) can be for any period of up to 12 months as determined by an authorised person.

- (3) Subclause (1) does not apply to a venue where Council or Committee meetings are held.

3.7 Persons may be directed to leave local government property

An authorised person who reasonably suspects that a person has contravened a provision of any written law in respect of local government property may direct the person to leave the local government property.

Division 2—Signs

3.8 Signs

- (1) The local government may erect a sign on local government property specifying any conditions of use which apply to that property.
- (2) A person must comply with a sign erected under subclause (1).
- (3) A condition of use specified on a sign erected under subclause (1) is—
 - (a) not be inconsistent with any provision of this local law; and
 - (b) be for the purpose of giving notice of the effect of a provision of this local law.

3.9 Transitional

A sign erected on a public place under a local law that is repealed under clause 1.4 is taken, on and from the commencement day, to be a sign erected under clause 3.8 if the sign is not inconsistent with any provisions of this local law.

PART 4—ACTIVITIES IN PUBLIC PLACES

Division 1—General

4.1 General prohibitions

Subject to this local law, a person must not—

- (a) damage a lawn or garden on or in a public place or remove any plant or part of a plant from a lawn or garden on a public place unless—
 - (i) the person is the owner or occupier of the lot abutting that portion of the thoroughfare and the lawn, garden or the particular plant was installed or planted by that owner or occupier; or
 - (ii) the person is acting under the authority of a written law;
- (b) on a verge, repair or service a vehicle;
- (c) place, allow to be placed or allow to remain on a thoroughfare or verge any thing that results in a hazard for a person using the thoroughfare or verge; or
- (d) use anything or do anything so as to create a nuisance on a public place.

4.2 Activities requiring a permit

- (1) A person must not, without a permit—
 - (a) dig or otherwise create a trench through or under a kerb or path;
 - (b) damage a street tree or remove a street tree or part of a street tree, including the roots, which is on a public place irrespective of whether the street tree was planted by the owner or occupier of the lot abutting the thoroughfare or by the local government unless the person is acting under the authority of a written law;
 - (c) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except for the purpose of 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 by the local government in connection with that collection;
 - (d) damage, remove or interfere with any part of a thoroughfare, kerb, path or any structure or sign erected on or in a thoroughfare by the local government or a person acting under lawful authority;
 - (e) unless installing, or in order to maintain, a permissible verge treatment—
 - (i) lay pipes under, or provide taps on, a verge; or
 - (ii) place or install, on a part of a thoroughfare, any thing such as crushed limestone, gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust, including for the purposes of storage of stockpiling;
 - (f) drive a vehicle or permit a vehicle to be driven across a kerb or path if the vehicle is so heavy or is of such a nature that it causes or is likely to cause damage to the kerb or the paving of the path;
 - (g) carry on trading in a public place;
 - (h) establish or operate an alfresco dining area, otherwise than in accordance with clause 7.1.
- (2) The local government may exempt a person from compliance with subclause (1).

Division 2—Vehicle crossings

4.3 Temporary crossing

- (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 must obtain a permit for the construction and use of a temporary crossing to protect the existing carriageway, kerb, drains and path 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) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that, until the temporary crossing is removed, the permit holder must keep the temporary crossing in good repair and in a condition that does not to create any danger or obstruction to persons using the thoroughfare.

4.4 Removal of a redundant crossing

(1) Where works on a lot will result in a crossing no longer giving access to a lot, the crossing must be removed and the kerb, drain, path, verge and any other part of the thoroughfare affected by the removal must be reinstated to the satisfaction of the CEO or an authorised officer.

(2) The local government may give written notice to the owner or occupier of a lot requiring him or her to—

- (a) remove all or part of a crossing which does not give access to the lot; and
- (b) reinstate the kerb, drain, path, 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 must comply with that notice.

Division 3—Verge treatments

4.5 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 the land, install a permissible verge treatment.

(2) A permissible verge treatment is—

- (a) the planting and maintenance of a lawn;
- (b) the planting and maintenance of a garden provided that—
 - (i) clear sight visibility is maintained at all times for a person using the abutting street in the vicinity of an intersection or bend in the street or using a driveway on land adjacent to the street for access to or from the street;
 - (ii) plantings are maintained at a height no greater than 0.7 metres;
 - (iii) where there is no path, a pedestrian has safe and clear access of a minimum width of 1.5 metres along that part of the verge immediately adjacent to the kerb;
 - (iv) it does not include a wall or built structure;
 - (v) it is not of a thorny, poisonous or hazardous nature; and
- (c) the installation over no more than one third of the area of the verge (including any approved vehicle crossing and/or footpath) of an acceptable material and, on the balance of the verge, the installation of mulch or a permissible verge treatment in accordance with paragraph (a) or (b) of subclause (2).

(3) In this clause—

acceptable material means any material which would create a hard surface, and which has been approved by the local government.

(4) Unless otherwise approved in writing by the local government, a person must not install or maintain a verge treatment which is not a permissible verge treatment.

(5) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 4.6.

4.6 Obligations of owner or occupier

(1) An owner or occupier who installs or maintains a permissible verge treatment must—

- (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 path on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment;
- (b) ensure that clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in a thoroughfare, or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare;
- (c) not place an obstruction on or around the verge treatment; and
- (d) ensure that the verge treatment does not damage or obstruct a drain, manhole, galley, inspection pit, channel, kerb or tree planted by the local government.

(2) If an owner or occupier fails to install or maintain a verge treatment in accordance with subclause (1), the local government may issue the owner or occupier with a notice requiring that person to make good any breach of subclause (1).

4.7 Powers to carry out public works on verges

(1) If the owner or occupier does not comply with a notice issued under clause 4.6(2), the local government may carry out any works to make good any breach of this local law.

(2) The local government or any other authority empowered by law to dig up a street may, without being liable to compensate any person, dig up all or any part of a street and disturb any verge treatment installed or placed by an owner or occupier.

(3) 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.

4.8 Transitional provision

(1) In this clause—

former provisions means the provisions of the repealed local laws which permitted certain types of verge treatments, whether with or without the consent of the local government.

(2) A verge treatment which—

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

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

Division 4—Street numbers

4.9 Assignment of street numbers

The CEO or an authorised person may assign a street number to a property in the district and may assign another street number to the property instead of that previously assigned.

4.10 Street number to be displayed

(1) The owner or occupier of a property must display and maintain the current street number assigned by the local government to the property in a conspicuous place on the front of the building, letterbox, fence or gate adjacent to the street fronting the property.

(2) A sign painted on the kerb adjacent to a property depicting the street number is satisfactory for the purposes of subclause (1).

Division 5—Fencing

4.11 Public place—clause 4(1) of Division 1, Schedule 3.1 of the Act

Each of the following places is 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 clause 1.5; and
- (b) local government property.

PART 5—ADVERTISING SIGNS

5.1 General prohibitions

A person must not erect or place a sign—

- (a) on a footpath;
- (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.7 metres;
- (c) on or within 2 metres of a carriageway;
- (d) in any other location where, in the opinion of an authorised person, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
- (e) on any natural feature, including a rock or tree on a thoroughfare, or on any bridge or the structural approaches to a bridge.

5.2 Signs requiring a permit

(1) In this clause—

thoroughfare does not include a footpath or any other part of a thoroughfare that is specified in clause 5.1.

(2) A person must not, without a permit—

- (a) erect or place a sign on a thoroughfare; or
- (b) post any bill or paint, place or affix any advertisement on a thoroughfare.

5.3 Exemptions

(1) The following advertising signs are exempt from the requirement of clause 5.2—

- (a) an advertising sign erected by the local government or with the approval of the local government on land under the care, control and management of the local government;
- (b) an advertising sign erected by an authority lawfully empowered to do so;
- (c) a home open sign or a garage sale sign, placed on a verge, provided that—
 - (i) the sign neither exceeds 0.65 metres in height nor 0.4 metres squared in area;
 - (ii) the sign is placed or erected on a thoroughfare on the day of the garage sale or home open and is removed from the thoroughfare by no later than 7:30pm on the day of the garage sale or home open;

- (iii) no more than 3 signs are erected or placed on street verges or other public places for any individual home open or garage sale; and
 - (iv) in the case of a home open sign only, the sign is marked with the name of the real estate agency and property address of the home open; and
- (d) an election sign, provided that—
- (i) the sign is placed or erected on a thoroughfare not more than 28 days before or more than 7 days after the relevant election day;
 - (ii) the sign is no greater than 2 metres squared in area;
 - (iii) the sign is erected at least 30 metres from any intersection; and
 - (iv) the sign is free standing and is not fixed to any sign, post, power or light pole, or similar structure.

(2) The CEO or an authorised person may exempt a person from compliance with clause 5.2.

5.4 Impounding of advertising signs

A sign which contravenes clause 5.1 or clause 5.2 may be removed, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

PART 6—SHOPPING TROLLEYS

6.1 Person not to leave shopping trolley in a public place

A person must not leave or discard a shopping trolley on local government property or in a public place other than in an area designated for the storage of shopping trolleys.

6.2 Shopping trolley to be removed by retailer

(1) In this clause—

restricted area means the area marked on the diagram in Schedule 2 and includes each of the thoroughfares (including the verges on each of the thoroughfares) marked in red on the diagram.

(2) If a shopping trolley is found within the restricted area, other than in an area set aside for the storage of shopping trolleys, the CEO or an authorised person may advise (verbally or in writing) a retailer whose name is marked on the shopping trolley of the location of the shopping trolley.

(3) If a shopping trolley is found in a public place, other than within the restricted area or in an area set aside for storage of shopping trolleys, the CEO or an authorised person may advise (verbally or in writing) a retailer whose name is marked on the shopping trolley of the location of the shopping trolley.

(4) A retailer must take all reasonable steps to remove a shopping trolley within 12 hours of being advised under subclause (2), or within 24 hours of being advised under subclause (3), unless the retailer—

- (a) requests the local government to collect and deliver the shopping trolley to the retailer; and
- (b) pays any fee for that collection and delivery (imposed and determined under and in accordance with sections 6.16 to 6.19 of the Act) within the period specified by the local government.

6.3 Impounding of abandoned shopping trolley

A shopping trolley that is not removed by a retailer after having been so advised under clause 6.2 may be removed, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

PART 7—ALFRESCO DINING AREA ON PUBLIC PLACE

7.1 Alfresco dining area on a public place without a permit

(1) Without a permit, a person may establish an alfresco dining area on a public place only if—

- (a) the person is the proprietor of a registered food business; and
- (b) the alfresco dining area is placed directly outside the registered food business and otherwise complies with the requirements of subclause (2).

(2) A person, when operating an alfresco dining area established under subclause (1), must—

- (a) ensure that there is a relevant current public liability insurance policy, in relation to all liability arising from the use or occupation of the alfresco dining area, containing indemnity provisions noting the interests of the local government, for an amount of not less than \$10 million;
- (b) maintain a clear pedestrian access area of 2 metres in width adjacent to the building frontage, to provide for consistent unobstructed pedestrian access;
- (c) place the alfresco dining area directly outside of the registered food business conducting the alfresco dining;
- (d) maintain an area which is at least 0.5 metres in width adjacent to any kerb, free of alfresco dining furniture and structures;
- (e) ensure that the alfresco dining area is no closer at any point than 2 metres away from a truncation, crossover or street corner;
- (f) provide for access to sufficient sanitary and ablutionary conveniences as specified in the Building Code of Australia;

- (g) operate the alfresco dining area only during the operating hours of the food business; and
- (h) ensure that the alfresco dining area is kept in a clean and tidy condition, including by maintaining the chairs, tables and other structures or equipment in the alfresco dining area in a good, clean and serviceable condition at all times.

7.2 No smoking areas

If an alfresco dining area is established under clause 7.1 or if a permit is granted under this local law in respect of an alfresco dining area—

- (a) the alfresco dining area is taken to be a no smoking area; and
- (b) a person must not smoke a tobacco product while in the alfresco dining area.

7.3 Removal of an unlawful alfresco dining area

(1) If an alfresco dining area is established or operated contrary to clause 7.1 or in contravention of the terms or conditions of a permit—

- (a) an authorised person may direct the proprietor or the permit holder (as the case may be) or any other person who appears to be involved in the operation of the alfresco dining area, to remove any tables, chairs, umbrellas or other structures or equipment; and
- (b) if a direction given under paragraph (a) is not complied with, or if it is not practicable to give a direction under paragraph (a), any tables, chairs, umbrellas or other structures or equipment may be removed by an authorised person and impounded in accordance with the Act.

(2) A person who is given a direction under subclause (1) must comply with the direction.

PART 8—PERMITS

Division 1—Applying for a permit

8.1 Application for a permit

(1) A person who is required to obtain a permit under this local law must apply for the permit in accordance with subclause (2).

(2) An application for a permit under this local law must—

- (a) be in the form determined by the CEO;
- (b) state the full name and address of the applicant;
- (c) be signed by the applicant;
- (d) contain the information required by the form;
- (e) contain any other information required for that particular type of permit under this local law; and
- (f) be forwarded to the local government 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) Before determining an application for a permit, the CEO or an authorised person may require the applicant to provide additional information reasonably related to the application.

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

(5) The CEO or an authorised person may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

8.2 Matters to be considered in determining permit application for advertising sign

In determining an application for a permit for the purpose of clause 5.2, the local government is to have regard to—

- (a) any other written law regulating the erection or placement of advertising signs within the district;
- (b) the dimensions of the advertising sign;
- (c) whether or not the advertising sign may create a hazard to persons using a thoroughfare;
- (d) other advertising signs already approved or erected in the vicinity of the proposed location of the advertising sign;
- (e) the amount of the public liability insurance cover, if any, to be obtained by the applicant; and
- (f) any other matters it considers relevant.

8.3 Decision on application for permit

(1) The CEO or an authorised person, in respect of an application for a permit, may—

- (a) approve an application for a permit, unconditionally or subject to any conditions that the CEO or authorised person considers appropriate; or
- (b) refuse to approve an application for a permit.

(2) If an application for a permit is granted, the CEO or an authorised person is to issue to the applicant a permit in the form determined by the CEO.

(3) If an application for a permit is refused, the CEO or an authorised person must give written notice of that refusal to the applicant.

(4) The CEO or an authorised person may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the applicant, or the date specified in the notice, whichever is the later.

(5) Where a clause of this local law refers to conditions which may be imposed on a permit, the clause does not limit the power of the CEO or authorised person to impose other conditions on the permit under subclause (1)(a).

8.4 General restrictions on grant of permit

(1) The CEO or an authorised person must not grant a permit if there are reasonable grounds for believing that the provision of the activity to which the application relates would constitute an unacceptable risk to the safety of the public.

(2) The CEO or an authorised person must not grant a permit unless the CEO or an authorised person is satisfied that—

- (a) the applicant is capable of carrying on the activity in accordance with this local law and the terms and conditions of the permit; and
- (b) the public place at which the activity is to be provided is suitable for that purpose.

(3) The CEO or an authorised person must not grant a permit to an applicant if the applicant has been found guilty of an offence under this local law unless the CEO or an authorised person is satisfied that there are exceptional reasons for doing so.

8.5 Compliance with a permit

A permit holder must comply with the terms and conditions (if any) of the permit.

Division 2—Conditions

8.6 Conditions which may be imposed on a permit

The CEO or an authorised person 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.

8.7 Conditions of trading in public place

If the CEO or an authorised person approves an application for a permit to conduct trading in a public place 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 trading;
- (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 trading;
- (d) the goods or services in respect of which a permit holder may conduct a stall or trading;
- (e) the number of persons and the names of persons permitted to conduct a stall or trading;
- (f) 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 any structure used for trading and the place of any structure;
- (k) the vacating of the place of trading when trading is not being carried on;

- (l) the acquisition 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.

8.8 Conditions of advertising sign

If the CEO or an authorised person approves an application for a permit to erect an advertising sign in a public place subject to conditions, those conditions may include—

- (a) the location, number, size, type, form or construction, of the advertising sign;
- (b) removal of the sign each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
- (c) securing the sign in position in accordance with any requirements of the local government;
- (d) placement of the sign so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and
- (e) be maintained in good condition.

Division 3—General

8.9 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 terms and conditions of the permit; or
- (b) cancelled under clause 8.12.

8.10 Renewal of permit

(1) A permit holder may apply to the CEO for the renewal of a permit.

(2) An application for renewal must—

- (a) be in the form determined by the CEO;
- (b) be signed by the permit holder;
- (c) provide the information required by the form;
- (d) be forwarded to the CEO no later than 28 days before the expiry of the permit, or within a shorter period that the CEO in a particular case permits; and
- (e) be accompanied by any fee imposed by the local government under sections 6.16 to 6.19 of the Act.

(3) The provisions of this Part that apply to an application for a permit also apply to an application for the renewal of a permit as though it were an application for a permit.

8.11 Transfer of permit

(1) An application for the transfer of a valid permit is—

- (a) to be made in writing;
- (b) to be signed by the permit holder and the proposed transferee of the permit;
- (c) to include such information as the CEO or an authorised person may require to enable the application to be determined; and
- (d) to be forwarded to the CEO together with any fee imposed by the local government under sections 6.16 to 6.19 of the Act.

(2) The CEO or an authorised person may, in respect of an application for the transfer of a permit—

- (a) approve the application, unconditionally or subject to any conditions that the CEO or authorised person considers appropriate; or
- (b) refuse the application.

(3) If an application for the transfer of a permit is granted—

- (a) the transfer is to be effected by an endorsement on the permit signed by the CEO or an authorised person;
- (b) the CEO or an authorised person is to give the applicant written notice of the decision to grant the application, including a copy of any endorsement on the permit under paragraph (a); and
- (c) the local government is not required to refund any part of any fee paid by the former permit holder.

(4) If an application for transfer of a permit is refused, the CEO or an authorised person must give the applicant written notice of the decision.

8.12 Cancellation or suspension of permit

(1) Subject to clause 9.1, a permit may be cancelled by the local government if—

- (a) the permit holder has not complied with a condition of the permit;
- (b) the permit holder has not complied with a provision of any written law which relates to the activity regulated by the permit;
- (c) the permit holder has transferred or assigned, or sought to transfer or assign, the permit without the approval of the local government; or
- (d) a law is amended or repealed in a manner which is inconsistent with the terms and conditions of the permit and which renders the permit invalid, ineffective or contrary to law.

(2) The local government may cancel or suspend a permit if the local government or a utility requires access to or near the place to which a permit applies for the purposes of carrying out works in or near the vicinity of that place.

(3) If a permit is cancelled under subclause (1) or subclause (2), the permit holder—

(a) must return the permit to the local government as soon as practicable; and

(b) subject to subclause (5), is taken to have forfeited any fees paid in respect of the permit.

(4) If a permit is suspended under subclause (2), the permit holder is, subject to subclause (5), taken to have forfeited any fees paid in respect of the permit.

(5) If a permit is cancelled or suspended under subclause (2) through no fault of the permit holder, the local government may refund to the permit holder all or part of the fees paid in respect of what would otherwise have been the remaining term of the permit.

8.13 Nominee of permit holder

If 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 the 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 apply as if the nominee was the permit holder.

PART 9—OBJECTIONS AND APPEALS

9.1 Objection and appeal rights

Where the local government makes a decision—

(a) to grant a person a permit or an approval; or

(b) to renew, vary, transfer or cancel a permit or an approval that a person has under this local law,

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

PART 10—MISCELLANEOUS

10.1 Disposal of lost property

An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the local government in any manner it thinks fit.

PART 11—ENFORCEMENT

Division 1—Notices

11.1 Liability for damage to local government property or a public place

(1) If a person unlawfully damages local government property or a public place, the local government may, by notice in writing to the person, require the person within the time specified in the notice to, at the option of the local government, pay the costs of—

(a) reinstating the property to the state it was in prior to the occurrence of the damage; or

(b) replacing that property.

(2) If a person given a notice under subclause (1) fails to comply with the notice, the local government may recover the costs referred to in the notice as a debt due to it.

11.2 Notice to remove thing unlawfully placed on thoroughfare

If any thing is placed on a thoroughfare contrary to this local law, the local government may give a notice to—

(a) the owner or the occupier of the property which abuts that portion of the thoroughfare where the thing has been placed; or

(b) such other person who may be responsible for the thing being so placed,

requiring the relevant person to remove the thing.

11.3 Notice to repair damage to thoroughfare

If a portion of a thoroughfare has been damaged, the local government or an authorised person may, by notice to the person who caused the damage, require the person to repair or replace that portion of the thoroughfare.

11.4 Local government may undertake requirements of a notice

If a person fails to comply with a notice given to him or her under this local law, the local government may do, or arrange to be done, the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in doing so.

Division 2—Offences and penalties

11.5 Offences

(1) A person who—

(a) fails to do anything required or directed to be done under this local law; or

(b) fails to comply with a notice given to him or her under this local law; or

(c) does an act or omits to do an act contrary to this local law,

commits an offence.

- (2) A person who commits an offence under this local law is liable, on conviction to—
- a penalty not exceeding \$5,000; and
 - if the offence is a continuing offence, an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

11.6 Prescribed offences

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16 of the Act.

(2) The amount appearing in the final column of Schedule 1 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

11.7 Form of notices

For the purposes of this local law—

- the form of the infringement notice give under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- 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

[Clause 11.6]

Item No.	Clause No.	Nature of Offence	Modified Penalty
1	2.1(1)(b)	Erecting a structure for public amusement etc. on local government property without a permit.	\$250
2	2.1(1)(c)	Erecting a building on local government property without a permit	\$250
3	2.1(1)(d)	Making an excavation on, erecting a fence or removing a fence on local government property without a permit	\$250
4	2.1(1)(e)	Depositing or storing any thing on local government property without a permit	\$250
5	2.1(1)(f)	Camping on or lodging at local government property for the purpose of sleeping on local government property without a permit	\$250
6	2.1(1)(g)	Teaching, coaching or training a person, animal or dog for profit in or on local government property without a permit	\$250
7	2.1(1)(h)	Conducting a function or undertaking a promotional activity on local government property without a permit	\$250
8	2.1(1)(i)	Lighting a fire on local government property without a permit	\$250
9	2.1(1)(j)	Carry on any trading on local government property without consent or permit	\$250
10	2.1(1)(k)(i)	Drive or ride or take any vehicle on to local government property without a permit	\$250
11	2.1(1)(k)(ii)	Park or stop any vehicle on local government property without a permit	\$250
12	2.1(1)(l)	Advertise anything by any means on local government property without permit	\$250
13	3.1	Behaviour on local government property which interferes with others	\$250
14	3.2	Behaviour on local government property detrimental to property	\$250
15	3.3	Taking or injuring fauna on local government property	\$250
16	3.4(2)	Smoking within a 10 metre radius of an entrance, exit or aperture of premises on local government property	\$250
17	3.5	Unauthorised entry to local government property	\$250
18	3.8(2)	Failure to comply with a sign on local government property regarding conditions of use	\$250
19	4.1(a)	Damaging a lawn or garden or removing any plant or part of a plant on or in a public place	\$250
20	4.1(b)	Repairing or servicing a vehicle on a verge	\$250
21	4.1(c)	Placing, allowing to be placed or allowing to remain on a thoroughfare or verge a hazardous thing	\$250
22	4.1(d)	Creating a nuisance on a public place	\$250

Item No.	Clause No.	Nature of Offence	Modified Penalty
23	4.2(1)(a)	Digging or creating a trench through or under a kerb or footpath without a permit	\$250
24	4.2(1)(b)	Damaging or removing a street tree without a permit	\$300
25	4.2(1)(c)	Throwing, placing or depositing any thing on a verge without a permit	\$250
26	4.2(1)(d)	Damaging, removing or interfering with a thoroughfare, kerb, path or structure or sign erected on a thoroughfare without a permit	\$250
27	4.2(1)(e)(i)	Laying pipes under or providing taps on any verge without a permit	\$250
28	4.2(1)(e)(ii)	Placing or installing prohibited materials on a thoroughfare without a permit	\$250
29	4.2(1)(f)	Drive a vehicle or permit a vehicle to be driven across a kerb or path causing or likely to cause damage	\$250
30	4.2(1)(g)	Carry on trading in a public place without permit	\$250
31	4.2(1)(h)	Establish an alfresco dining area without permit	\$250
32	4.3(1)	Failure to obtain a permit for a temporary vehicle crossing.	\$250
33	4.5(4)	Installing a verge treatment other than a permissible verge treatment	\$250
34	4.6(1)(a)	Failure to keep permissible verge treatment in a good and tidy condition and path and carriageway not obstructed.	\$250
35	4.6(1)(b)	Failure to ensure that clear sight visibility is maintained	\$250
36	4.6(1)(c)	Placing an obstruction on or around a verge treatment	\$250
37	4.6(1)(d)	Failure to ensure verge treatment does not damage or obstruct a drain, manhole, galley, inspection pit, channel, kerb or tree	\$250
38	4.10(1)	Failure to properly display and maintain street number	\$100
39	5.1	Erecting or placing of advertising sign in a prohibited area	\$250
40	5.2(2)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	\$250
41	6.1	Leaving or discarding a shopping trolley in a public place other than an area set aside for shopping trolleys	\$250
42	6.2(4)	Failing to remove shopping trolley in the specified period	\$250
43	7.2(b)	Smoking tobacco product in alfresco dining area	\$250
44	7.3(2)	Failure to comply with direction of authorised person to remove tables, chairs and other equipment from alfresco dining area	\$250
45	8.5	Failure to comply with terms and conditions of a permit	\$250
46	11.5(1)(b)	Failure to comply with a notice	\$300

SCHEDULE 2—RESTRICTED AREA

[Clause 6.2(2)]



Dated this 24th of September 2021.

The Common Seal of the City of Canning was affixed by authority of a resolution of the Council in the presence of—

PATRICK HALL, Mayor.
STEPHEN CAIN, Chief Executive Officer.