

DOG ACT 1976
LOCAL GOVERNMENT ACT 1995
Town of Port Hedland
DOGS LOCAL LAW 2021

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the *Town of Port Hedland* resolved on 24 November 2021 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Town of Port Hedland Dogs 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

This local law repeals the *Town of Port Hedland Local Law (Dogs)* as published in the *Government Gazette* on 2 October 1998, and as amended in the *Government Gazette* on 26 February 1999.

1.5 Interpretation

In this local law unless the context otherwise requires—

Act means the *Dog Act 1976*;

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

CEO means the Chief Executive Officer of the local government;

dangerous dog means a dog which is the subject of a declaration under section 33E of the Act declaring it to be a dangerous dog;

district means the district of the local government;

dog management facility has the meaning given to it in section 3(1) of the Act;

local government means the *Town of Port Hedland*;

Regulations means the *Dog Regulations 2013*;

Schedule means a schedule in this local law;

fence where used in this local law shall include walls and screen walls;

public building has the meaning given to it in *Health (Miscellaneous Provisions) Act 1911*;

public place as defined in section 3(1) of the Act; and

street includes highway, road, lane, thoroughfare, carriageway or similar place, or part thereof which is within the district, which the public are allowed to use and includes every part of the highway, lane, thoroughfare, or similar place and other things including the street verge, footpath, bridges and culverts appurtenant to it.

PART 2—IMPOUNDING OF DOGS

2.1 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 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

2.2 Attendance of authorised person at dog management facility

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

2.3 Release of impounded dog

(1) A claim for the release of a dog seized and impounded is to be made to the authorised person or in the absence of the authorised person, to the CEO, subject to subclause (2) upon payment of the fees specified by local government, the dog shall be released to such person.

(2) The authorised person is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the authorised person, satisfactory evidence—

- (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
- (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

3.1 Dogs to be confined

- (1) The owner or occupier of premises within the district on which a dog is kept shall—
 - (a) ensure that the means exist on the premises for effectively confining the dog within the premises; and
 - (b) cause the portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog to that portion in accordance with the provisions of this local law.
- (2) Every part of a fence used to confine a dog shall be of a type, height and construction which, having regard to the breed, age, size and physical condition of the dog, shall be capable of preventing the dog, at all times from passing over, under or through it.
- (3) Where a gate forms part of fence, the gate shall—
 - (a) be kept closed at all times except when the dog is not kept on the premises;
 - (b) be fitted with an effective self-closing mechanism and an effective self-latching mechanism attached to the inside of the gate; and
 - (c) be fitted with a mechanism which enables the gate to be locked.
- (4) Where an occupier fails to comply with subclause (1), he or she commits an offence.
Penalty: Where the dog is a dangerous dog, \$4,000; otherwise \$2,000.

3.2 Limitation on the number of dogs

- (1) This clause does not apply to premises which have been—
 - (a) licensed under Part 4 as an approved kennel establishment; or
 - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act—
 - (a) if the premises are situated on a lot having an area of 4 hectares or more—6 dogs over the age of 3 months and the young of those dogs under that age; or
 - (b) if the premises are situated on any other lot—2 dogs over the age of 3 months and the young of those dogs under that age and a maximum of 3 dogs with an application

PART 4—APPROVED KENNEL ESTABLISHMENTS

4.1 Interpretation

In this Part and in Schedule 2—

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

licensee means the holder of a licence; and

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

4.2 Application for licence for approved kennel establishment

An application for a licence must be made in the form of that in Schedule 2, and must be lodged with the local government together with—

- (a) a plan showing the details and specifications of all kennel and yards appurtenant thereto and showing the distances from the kennels to the boundaries of the land the subject of the application and all buildings on the land;
- (b) such other information reasonably required by the local government; and
- (c) the fee for the application for a licence referred to in clause 4.10(1).

4.3 Notice of proposed use

- (1) A person seeking the issue of a licence to keep an approved kennel establishment shall—
 - (a) give notice of the proposed use of the land in writing to the owners and occupiers of all adjoining land and premises; and
 - (b) advertise the intention to do so in a newspaper having circulation in the area at least 14 days before application is made with the local government.
- (2) The notices in subclause (1) must specify that—
 - (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
 - (b) the application and plans and specifications may be inspected at the offices of the local government.
- (3) Where—
 - (a) the notices given under subclause (1) do not clearly identify the premises; or
 - (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

4.4 Exemption from notice requirements

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

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

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

4.5 When application can be determined

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

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

4.6 Determination of application

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

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

4.7 Where application cannot be approved

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

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

4.8 Conditions of approval

(1) The local government may approve an application for a licence subject to the conditions contained in Schedule 3 and to such other conditions as the local government considers appropriate.

(2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 3.

4.9 Compliance with conditions of approval

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

Penalty: Where a dog involved in the contravention is a dangerous dog, \$4,000 and a daily penalty of \$400; otherwise \$2,000 and a daily penalty of \$200.

4.10 Fees

(1) On lodging an application for a licence, the applicant is to pay a fee to the local government.

(2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.

(3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.

(4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.

4.11 Form of licence

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

4.12 Period of licence

(1) licence to keep an approved kennel establishment shall remain valid for a period of twelve (12) months from the date of issue thereof.

(2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.

(3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

4.13 Variation or cancellation of licence

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

4.14 Transfer

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

4.15 Notification

The local government is to give written notice to—

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

4.16 Inspection of kennel

With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time.

PART 5—MISCELLANEOUS

5.1 Offence to excrete

- (1) A dog must not excrete on—
 - (a) any thoroughfare or other public place; or
 - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.
- (4) Notwithstanding clause 6.3, the maximum penalty for an offence under subclause (1) is \$1000.

PART 6—ENFORCEMENT

6.1 Interpretation

In this Part—

- infringement notice* means the notice referred to in clause 6.5; and
notice of withdrawal means the notice referred to in clause 6.8(1).

6.2 Offences

A 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.

6.3 General penalty

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 of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of the day during which the offence has continued.

6.4 Modified penalties

(1) The offences contained in Schedule 1 are offences in relation to which a modified penalty may be imposed.

(2) The amount appearing in the fourth column of Schedule 1 directly opposite an offence is the modified penalty payable in respect of that offence if—

(a) the dog is not a dangerous dog; or

(b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.

(3) The amount appearing in the fifth column of Schedule 1 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

6.5 Issue of infringement notice

Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form of Form 8 of the First Schedule of the Regulations.

6.6 Failure to pay modified penalty

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

6.7 Payment of modified penalty

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

(a) appropriate that amount in satisfaction of the penalty and issue an acknowledgment; or

(b) withdraw the Infringement Notice and refund the amount so paid.

(2) Where a person does not contest an allegation that the person committed an offence of the kind to which this clause applies, the production of an acknowledgment from the local government that the modified penalty has been paid to the local government is a defence to a charge of the offence in respect of which the modified penalty was paid.

6.8 Withdrawal of infringement notice

(1) Whether or not the modified penalty has been paid, local government, or an authorised person may withdraw an infringement notice by sending a notice in the form of Form 9 of the First Schedule of the Regulations, any amount received by way of modified penalty must be refunded and any acknowledgment of the receipt of that amount must for the purposes of any proceedings in respect of the alleged offence be regarded as not having been issued.

(2) A person authorised to issue an infringement notice under clause 6.5 cannot sign or send a notice of withdrawal.

6.9 Service

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

Schedule 1—Offences in respect of which modified penalty applies

(clause 6.4)

| Item | Offence | Nature of offence | Modified penalty \$ | Dangerous Dog Modified Penalty \$ |
|------|---------|--|---------------------|-----------------------------------|
| 1 | 3.1 | Failing to provide means for effectively confining a dog | 200 | |
| 2 | 4.9 | Failing to comply with the conditions of a licence | 200 | |
| 3 | 5.1(2) | Dog excreting in prohibited place | 100 | |

Dated 2nd February 2022.

The Common Seal of the *Town of Port Hedland* was affixed by authority of a resolution of the Council in the presence of:

PETER CARTER, Mayor.
CARL ASKEW, Chief Executive Officer.

Schedule 2—Application for a licence for an approved kennel establishment
(clause 4.2)

I/we (full name)
of (postal address)
(telephone number)
(facsimile number)
(E-mail address).....
Apply for a licence/renewal for an approved kennel establishment at (address of premises).....
.....
For (number and breed of dogs).....
* (insert name of person) will be residing at the premises on and from (insert date)

* (insert name of person) will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at (insert address of residence) on and from (insert date).

Attached are—

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside—
 - (i) at the premises; or
 - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as, in the keeping of dogs at the proposed kennel establishment.

Signature of applicant.....

Date

* delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months—section 27.5 of the Dog Act.

OFFICE USE ONLY

Application fee paid on *[insert date]*.

Schedule 3—Conditions of a licence for an approved kennel establishment
(clause 4.8(1))

An application for a licence for an approved kennel establishment may be approved subject to the following conditions—

- (a) each kennel shall have a yard appurtenant thereto which is capable of retaining the dog within its confines;
- (b) each kennel and each yard must be at a distance of not less than—
 - (i) 10m from the front boundary of the premises and 10m from any other boundary of the premises;
 - (ii) 20m from any dwelling; and
 - (iii) 20m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence not less than two metre in height constructed of materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;

- (f) the upper surface of the kennel floor must be—
 - (i) at least 100mm above the surface of the surrounding ground;
 - (ii) smooth so as to facilitate cleaning;
 - (iii) rigid;
 - (iv) durable;
 - (v) slip resistant;
 - (vi) resistant to corrosion;
 - (vii) non-toxic;
 - (viii) impervious;
 - (ix) free from cracks, crevices and other defects; and
 - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
 - (g) all kennel floor washings shall pass through the drain and shall be disposed of in accordance with the requirements of the *Health (Miscellaneous Provisions) Act 1911*;
 - (h) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
 - (i) from the floor, the lowest internal height of a kennel must be at least two metres from the floor with an average inbuilt height of not less than 2100 mm;
 - (j) the walls of each kennel must be constructed of concrete, brick, steel or timber framing sheeted internally and externally with galvanized iron or fibre cement sheeting or other durable material approved by the local government;
 - (k) all gates shall be provided and fitted with proper catches or other means of securing or fastening such gate;
 - (l) all external surfaces of each kennel must be kept in good condition;
 - (m) the roof of each kennel must be constructed of impervious material;
 - (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person or Environmental Health Officer;
 - (o) all refuse, faeces and food waste must be disposed of daily in a manner approved by the authorised officer or Environmental Health Officer;
 - (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
 - (q) maintain the established in a clean, sanitary and tidy condition;
 - (r) every approved kennel established shall be provided with reticulated water in the form of a supported stand pipe and hose for the hosing down of kennels and yards.
 - (s) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
 - (i) at the premises; or
 - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.
-