**DOG ACT 1976**
**LOCAL GOVERNMENT ACT 1995**

SHIRE OF MUNDARING

# DOGS LOCAL LAW 2017

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 Shire of Mundaring resolved on 14 November 2017 to make the following local law.

## PART 1 – PRELIMINARY

### 1.1 Title

This is the *Shire of Mundaring Dogs Local Law 2017*.

### 1.2 Commencement

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

### 1.3 Repeal

The *Shire of Mundaring Dogs Local Law* published in the Government Gazette of 16 June 2004 and amended by the *Dog Amendment Local Law 2004* published in the *Government Gazette* of 18 February 2005, is repealed.

### 1.4 Terms used

(1) 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;

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

***local government*** means the Shire of Mundaring;

***pound*** means any dog management facility, or any replacement facility, established as a pound by the local government under section 11(1) of the Act;

***public place*** means any place to which the public may lawfully have access;

***Regulations*** means the *Dog Regulations 2013*;

***Schedule*** means a schedule in this local law;

***Shire ranger*** means any Shire employee appointed under section 11(1) of the Act to administer the Shire's dog management facilities; and

***thoroughfare*** has the meaning given to it in section 1.4 of the *Local Government Act 1995*.

(2) A term that is used in this local law and is not defined in subclause (1) has the same meaning as is given to it in the Act or, if not defined in the Act, the same meaning as given to it in the *Local Government Act 1995*.

### 1.5 Application

This local law applies throughout the district.

## PART 2 – KEEPING OF DOGS

### 2.1 Dogs to be confined

(1) An occupier of premises on which a dog is kept, must –

(a) ensure that a portion of the premises on which the dog is kept is fenced with an escape-proof fence that a dog can not jump or climb over or get under and that prevents any part of the dog from passing through;

(b) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with a fit-for-purpose latch;

(c) maintain the fence and all gates and doors in the fence in good order and condition; and

(d) where no part of the premises consists of open space, yard or garden or there is no open space, garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.

(2) An occupier who fails to comply with subclause (1) commits an offence.

(3) Notwithstanding subclauses (1) and (2) the confinement of dangerous dogs is dealt with in the Act and the Regulations.

### 2.2 Limitation on the number of dogs

(1) 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, 2 dogs over the age of 3 months and the young of those dogs under that age.

(2) Upon request the local government may grant an exemption in relation to any particular premises under section 26(3) of the Act; no exemption shall be granted to the owner or occupier of any premises if the premises by reason of inadequate fencing, size, location or detrimental effect on any other premises, would be inappropriate for the housing of three or more dogs.

(3) An exemption granted under subclause (1) will cease to have effect on the date of any conviction for an offence under the *Dog Act 1976* in respect of the dogs or any person in charge of the dogs.

(4) If the premises in which the dog owner resides are leased or rented, the written consent of the property owner is required to keep three or more dogs on that property and a copy of this consent must be provided with the application for exemption.

(5) An exemption issued under this clause may be subject to conditions; a breach of such conditions shall be a breach of this local law.

(6) An exemption issued under this clause may be revoked for breach of conditions or due to a change of circumstances relating to the premises, the owner or occupier or the dogs kept on the premises.

(7) A dog owner who fails to comply with the provisions of this clause commits an offence.

**2.3 Offence to excrete**

(1) If a dog defecates at any time on a thoroughfare or other public place, and the owner or person who is in charge of the dog at that time fails to remove the excrement from the land forthwith, that person commits an offence unless -

(a) they have a reasonable excuse for failing to do so; or

(b) the owner, occupier or other person or authority having control of the thoroughfare or other public place has consented to his failing to do so.

(2) For the purpose of subclause (1) -

(a) placing the excrement in a receptacle on the land which is provided for this purpose or for the disposal of waste, shall be a sufficient removal from the land; and

(b) being unaware of the defecation (by reason of not being in the vicinity or otherwise) or not having a device for or other suitable means of removing the excrement, shall not be a reasonable excuse for failing to remove the excrement.

## PART 3 – IMPOUNDING OF DOGS

### 3.1 Fees, charges and costs

The following fees, charges and costs 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 cost of destruction and disposal of a dog referred to in section 29(15) of the Act.

### 3.2 Attendance of Shire ranger at pound

A Shire ranger is to be in attendance at the pound for the release of dogs at the times and on the days of the week as are determined by the CEO.

### 3.3 Release of impounded dog

(1) A claim for the release of a seized and impounded dog is to be made to a Shire ranger.

(2) A Shire ranger is not to release a seized and impounded dog to any person unless that person has produced to the satisfaction of that Shire ranger satisfactory evidence –

(a) of his or her ownership of the dog or of his or her 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 4 - ENFORCEMENT

In this Part –

***infringement notice*** means the notice referred to in clause 4.3;

***notice of withdrawal*** means the notice referred to in clause 4.6.

### 4.1 Offences and general penalty

(1) 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.

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

### 4.2 Modified penalties

(1) An offence against a clause specified in Schedule 1 is an offence 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 the offence does not involve a dangerous dog.

(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 offence involves a dangerous dog.

### 4.3 Issue of infringement notice

(1) 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, the authorised person may serve on the alleged offender a notice in the form determined by the local government from time to time.

(2) An infringement notice may be served on an alleged offender personally or by leaving it at or posting it to her or his address as ascertained from the alleged offender, at the time of or immediately following the occurrence giving rise to the allegation of the offence, or as recorded by the local government under the Act.

### 4.4 Failure to pay modified penalty

Where a person who receives 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, the person must be regarded as having declined to have the allegation dealt with by way of a modified penalty.

### 4.5 Payment of modified penalty

An alleged offender on whom an infringement notice has been served 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 modified penalty, with or without a reply as to the circumstances giving rise to the allegation, and then –

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

(b) the local government, or an authorised person acting on behalf of the local government, may withdraw the infringement notice under clause 4.6 and refund the amount so paid.

### 4.6 Withdrawal of infringement notice

(1) An infringement notice may, whether or not the modified penalty has been paid, be withdrawn by the local government or an authorised person acting on behalf of the local government, by sending a notice in the form determined by the local government from time to time to the alleged offender at the address specified in the notice or his or her last place of residence or business and in that event, any amount received by way of modified penalty must be refunded and any acknowledgement 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 appointed under section 29(1) of the Act to exercise the power of an authorised person to serve infringement notices under clause 4.3(1) is not eligible to be appointed under that section to exercise the power of an authorised person to withdraw infringement notices under this clause 4.6.

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## Schedule 1 - Offences in respect of which a modified penalty applies

[Clause 4.2]

| Item No. | Clause | Nature of offence | Modified Penalty | Dangerous Dog Modified Penalty |
|---|---|---|---|---|
| 1 | 2.1 | Failing to provide means for effectively confining a dog | $200 | |
| 2 | 2.3 | Failing to remove excrement forthwith | $200 | $200 |

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Adopted at the ordinary meeting of the Council of the Shire of Mundaring held on the 14th day of November 2017.

The Common Seal of the Shire of Mundaring was affixed by authority of a resolution of Council in the presence of –

Cr John Daw
Shire President

SHIRE OF MUNDARING
VIAS TUTAS CURIMUS
COMMON SEAL

Paul O'Connor
Acting Chief Executive Officer