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**SHIRE OF UPPER GASCOYNE**

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ACTIVITIES IN THOROUGHFARES LOCAL LAW 2021  
LOCAL GOVERNMENT ACT 1995

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## LOCAL GOVERNMENT

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LG401

**LOCAL GOVERNMENT ACT 1995**

*Shire of Upper Gascoyne*

ACTIVITIES IN THOROUGHFARES LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Upper Gascoyne resolved on 22nd June 2022 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Upper Gascoyne Activities in Thoroughfares Local Law 2021*.

## 1.2 Definitions

In this local law unless the context otherwise requires—

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

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

**authorised person** means a person authorised by the local government under section 9.10(2) of the Act to perform any of the functions of an authorised person under this local law;

**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;

**footpath** has the meaning given to it in the *Road Traffic Code 2000*;

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

**kerb** includes the edge of a carriageway;

**local government** means the Shire of Upper Gascoyne;

**local government property** means anything except a thoroughfare—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*; or
- (c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;

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

**permit** means a permit issued under this local law;

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

**person** does not include the local government;

**premises** for the purpose of the definition of public place in both this clause and clause 6.1, means a building or similar structure, but does not include a carpark or a similar place;

**public place** includes any 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; and
- (b) local government property;

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

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

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

**vehicle** includes—

- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
- (b) an animal being ridden or driven,

but excludes—

- (c) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
- (d) a pram, a stroller or a similar device; and

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

## 1.3 Application

This local law applies throughout the district.

## 1.4 Commencement

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

# PART 2—ACTIVITIES IN THOROUGHFARES

## Division 1—General

### 2.1 General prohibitions

A person shall not—

- (a) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;

## 2.2 Activities allowed with a permit—general

- (1) A person shall not, without a permit—
- (a) dig or otherwise create a trench through or under a kerb or footpath;
  - (b) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
  - (c) cause any obstruction to a water channel or a water course in a thoroughfare;
  - (d) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
  - (e) damage a thoroughfare;
  - (f) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 4.2(1)(a);
  - (g) fell any tree onto a thoroughfare;
  - (h) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
  - (i) on a public place use anything or do anything so as to create a nuisance;
  - (j) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

### *Division 2—Public works*

## 2.3 Power to carry out public works on verge

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

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

## 2.4 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act

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

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

### *Division 3—Property numbers*

#### *Subdivision 1—Preliminary*

## 2.5 Interpretation

In this Division, unless the context requires otherwise—

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

### *Subdivision 2—Assignment and marking of numbers*

## 2.6 Assignment of numbers

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

### *Division 4—Signs erected by the local government*

## 2.7 Signs

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

### *Division 5—Driving on a closed thoroughfare*

## 2.8 No driving on closed thoroughfare

- (1) A person shall not drive or take a vehicle on a closed thoroughfare unless—
- (a) that is in accordance with any limits or exceptions specified in the order made under section 3.50 of the Act; or
  - (b) the person has first obtained a permit.
- (2) In this clause—
- closed thoroughfare** means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

**PART 3—OBSTRUCTING VEHICLES***Division 1—Vehicles***3.1 Leaving vehicle in public place or on local government property**

(1) A person shall not leave a vehicle, or any part of a vehicle, in a public place or on local government property so that it obstructs the use of any part of that public place or local government property, unless that person has first obtained a permit or is authorised to do so under a written law.

(2) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

**PART 4—PERMITS***Division 1—Applying for a permit***4.1 Application for permit**

(1) Where a person is required to obtain a permit under this local law, that person shall apply for the permit in accordance with subclause (2).

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

- (a) be in the form determined by the local government;
- (b) be signed by the applicant;
- (c) provide the information required by the form; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

(3) The local government may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.

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

(5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

**4.2 Decision on application for permit**

(1) The local government may—

- (a) approve an application for a permit unconditionally or subject to any conditions; or
- (b) refuse to approve an application for a permit.

(2) If the local government approves an application for a permit, it is to issue to the applicant a permit in the form determined by the local government.

(3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

(4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under subclause (1)(a).

(5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).

*Division 2—Conditions***4.3 Conditions which may be imposed on a permit**

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

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

#### 4.4 Imposing conditions under a policy

(1) In this clause—

**policy** means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 4.2(1)(a).

(2) Under clause 4.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 4.2(2).

(4) An application for a permit is to be taken not to have been approved subject to the conditions contained in a policy until the local government gives the permit holder a copy of the policy or the part of the policy which is relevant to the application.

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

#### 4.5 Compliance with and variation of conditions

(1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.

(2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

### *Division 3—General*

#### 4.6 Duration of permit

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 4.10.

#### 4.7 Renewal of permit

(1) A permit holder may apply to the local government in writing prior to expiry of a permit for the renewal of the permit.

(2) The provisions of—

- (a) this Part; and
- (b) any other provision of this local law relevant to the permit which is to be renewed,

shall apply to an application for the renewal of a permit with all the necessary changes as required.

#### 4.8 Transfer of permit

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

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

(2) The local government may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by—

- (a) an endorsement on the permit signed by the CEO; or
- (b) issuing to the transferee a permit in the form determined by the local government.

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

#### 4.9 Production of permit

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

#### 4.10 Cancellation of permit

(1) Subject to clause 5.1, a permit may be cancelled by the local government if the permit holder has not complied with a—

- (a) condition of the permit; or
- (b) provision of any written law which may relate to the activity regulated by the permit.

(2) On the cancellation of a permit the permit holder—

- (a) shall return the permit as soon as practicable to the local government; and
- (b) is to be taken to have forfeited any fees paid in respect of the permit.

**PART 5—OBJECTIONS AND APPEALS****5.1 Application of Part 9 Division 1 of Act**

When the local government makes a decision—

- (a) under clause 4.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

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

**PART 6—MISCELLANEOUS NOTICES****6.1 Notice to repair damage to thoroughfare**

Where any portion of a thoroughfare has been damaged, the local government may by notice to the person who caused the damage order the person to repair or replace that portion of the thoroughfare to the satisfaction of the local government.

**6.2 Notice to remove thing unlawfully placed on thoroughfare**

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

**PART 7—ENFORCEMENT***Division 1—Notices given under this local law***7.1 Offence to fail to comply with notice**

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

**7.2 Local government may undertake requirements of notice**

Where a person fails to comply with a notice referred to in clause 7.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

*Division 2—Offences and penalties**Subdivision 1—General***7.3 Offences**

(1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

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

*Subdivision 2—Infringement notices and modified penalties***7.4 Prescribed offences**

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

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

**7.5 Forms**

Unless otherwise specified, for the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

**SCHEDULE 1—PRESCRIBED OFFENCES**

<b>CLAUSE</b>	<b>NATURE OF OFFENCE</b>	<b>MODIFIED PENALTY \$</b>
2.1(a)	Damaging or interfering with signpost or structure on thoroughfare	500
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	125
2.2(1)(b)	Causing obstruction to vehicle or person on thoroughfare without a permit	125
2.2(1)(c)	Causing obstruction to water channel on thoroughfare without a permit	250
2.2(1)(d)	Placing or draining offensive fluid on thoroughfare without a permit	250

<b>CLAUSE</b>	<b>NATURE OF OFFENCE</b>	<b>MODIFIED PENALTY \$</b>
2.2(1)(e)	Causing damage to a thoroughfare	250
2.2(1)(f)	Lighting a fire on a thoroughfare without a permit	350
2.2(1)(g)	Felling tree onto thoroughfare without a permit	125
2.2(1)(h)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
2.2(1)(i)	Creating a nuisance on a thoroughfare without a permit	125
2.2(1)(j)	Interfering with anything on a thoroughfare without a permit	125
2.7(2)	Failure to comply with sign on public place	125
2.8(1)	Driving or taking a vehicle on a closed thoroughfare	500
3.1(1)	Vehicle obstructing a public place or local government property	125
4.5	Failure to comply with a condition of a permit	125
4.9	Failure to produce permit on request of authorised person	125
7.1	Failure to comply with notice given under local law	500

Dated 27 of July 2022.

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

D. HAMMARQUIST, Shire President.  
J. McCLEARY, Chief Executive Office.



