

PART XX – ENFORCEMENT OF LOCAL LAWS

Division 1 – Preliminary

20.1 In this part, unless the context otherwise requires –

“alleged offender” means the person who is alleged to have committed a contravention that can lead to impounding;

“contravention that can lead to impounding” means anything prescribed under the authority of the 1995 Act to be a contravention that can lead to impounding;

“specified”, in relation to a notice, means specified in the notice.

20.2 It shall be a breach of these Local Laws for any person to hinder or interfere with an Authorised Person acting in the course of a duty, power or function under these Local Laws.

20.3 IDENTIFICATION

An Authorised Person shall on demand show an identification of that person as such.

Division 2 – Impounding

20.4 CATTLE TRESPASS

The provisions of this Division do not apply to cattle to the extent that they are in conflict with any provision in Part XX of the 1960 Act.

20.5 POWER TO REMOVE AND IMPOUND

(1) An Authorised Person may remove and impound any animal, vehicle or goods involved in a contravention under these Local Laws that can under these Local Laws or under any other law lead to impounding.

(2) An Authorised Person may use reasonable force to exercise the power referred to in subsection (1) (1995 Act s.3.39).

20.6 Where an Authorised Person places an animal, vehicle or goods in a local government depot, public pound, or other place set aside for that purpose, the animal, vehicle or goods shall thereafter be dealt with according to law.

20.7 Every animal, vehicle or thing seized under these Local Laws shall be entered in a register, provided by Council for that purpose, details of the time and date, a description of the animal, vehicle or goods and of the place from which it was removed and shall notify the CEO who shall exhibit on the noticeboard of Council notification that an animal, vehicle or goods therein described has been taken into custody and shall, unless the animal, vehicle or goods is sooner recovered, keep that notification exhibited for a period of not less than 7 days.

20.8 PROSECUTION OR NOTICE

- (1) When any animal, vehicle or goods has been impounded under section 20.5 Council is required to either –
 - (a) institute a prosecution against the alleged offender; or
 - (b) give the alleged offender notice that the animal, vehicle or goods may be collected from a place specified during such hours as are specified.
- (2) If after the expiration of 7 days after the animal, vehicle or goods was removed for impounding, Council has been unable to give the alleged offender a notice under subsection (1)(b) because it has been unable, after making reasonable efforts to do so, to find the alleged offender, Council is to be taken to have given that notice. (1995 Act s.3.42).
- (3) In an appropriate case Council may both prosecute and give a notice under subsection (1)(b).

20.9 Where an animal, vehicle or goods has been removed and impounded under section 20.5 and a prosecution is instituted, if the alleged offender –

- (a) is not convicted; or
- (b) is convicted but the court does not order that animal, vehicle or goods be confiscated,

and if the animal, vehicle or goods continues to be impounded, Council is required to give the alleged offender notice that the goods may be collected from the place specified during such hours as are specified. (1995 Act s.3.44).

20.10 A notice referred to in the preceding section is to include a short statement of the effect of the relevant provisions of sections 3.46, 3.47 and 3.48 of the 1995 Act.

20.11 A person may recover a seized animal, vehicle or goods from custody by paying to Council the costs of removing, impounding and keeping the animal, vehicle or goods and Council may refuse to allow an animal, vehicle or goods impounded under section 20.5 to be collected until those costs have been paid. (1995 Act s.3.46(1)).

- 20.12(1) Council may sell or otherwise dispose of any animal, vehicle or goods that has been ordered to be confiscated by a court in a prosecution by the City. (1995 Act s.3.47(1)).
- (2) Council may sell or otherwise dispose of an impounded animal, vehicle or goods that has not been collected within the period specified in subsection (3) of –
- (a) a notice having been given under section 20.8(1)(b) or section 20.9 hereof;
or
- (b) being impounded if Council has been unable, after making reasonable efforts to do so, to give that notice to the alleged offender.
- (3) The period after which an animal, vehicle or goods may be sold or otherwise disposed of under subsection (2) is –
- (a) for an animal – 7 days; and
- (b) for a vehicle or goods – 2 months.
- (4) Section 3.58 of the 1995 Act applies to the sale of an animal, vehicle or goods under this section as if they were property referred to in that section of the 1995 Act.
- (5) Money received by Council from the sale of an animal, vehicle or goods under subsection (2) is to be credited to its trust fund except to the extent required to meet the costs and expenses incurred by Council in removing, impounding and selling the animal, vehicle or goods. (1995 Act s.3.47)).

20.13 DISPOSAL OF SICK OR INJURED ANIMALS

If an impounded animal is ill or injured to such an extent that treating it is not practicable, the animal shall be dealt with in accordance with section 3.47A of the 1995 Act.

20.14 RECOVERY OF IMPOUNDING EXPENSES

If a vehicle, animal or goods is removed and impounded under section 20.5 and the alleged offender is convicted, Council may take the recovery action referred to in section 3.48 of the 1995 Act.

- 20.15 A person is not entitled to claim, by way of damages or otherwise against an Authorised Person Council or the City in respect of any animal, vehicle or goods seized and dealt with under the provisions of these Local Laws or against any person who purchases an animal, vehicle or goods sold by Council under the provisions of this Part.

Division 3 - Infringement Notices

20.16 DEFINITIONS

For the purpose of this Division, the terms “Authorised Person” and “owner” have the meanings given to them in section 9.15 of the Act.

20.17 These provisions for Infringement Notices apply only to such of these Local Laws as are made under the Act. Where Parts of these Local Laws are made under other statutes, any Infringement Notice provisions in those statutes shall apply to those Parts respectively.

20.18 Notices and Infringement Notices issued pursuant to this Division shall be issued in the circumstances referred to in section 9.16(2) of the Act, and in accordance with the provisions of Part 9 Division 2 Subdivision 2 of the Act, and Part 5 of the Local Government (Functions and General) Regulations 1966, and the forms prescribed in the Regulations shall apply.

20.19 Every breach of any of these Local Laws made under the Act (excluding specifically Parts VI, VII and XVII) is hereby prescribed as a breach in respect of which an infringement notice may be issued provided that the infringement notice procedure may only be adopted if the CEO or an Authorised Person under this Division is satisfied that the breach in the circumstances of the particular case has the characteristics referred to in paragraphs (a) and (b) of section 9.16(2) of the Act.

20.20 An infringement notice may be withdrawn in the manner provided and subject to the provisions in section 9.20 of the Act and regulation 27 of the Local Government (Function and General) Regulations, and using the form prescribed in the Regulations.

20.21 Where any Act allows an infringement notice to be issued in respect of an offence under these Local Laws an infringement notice may be issued in lieu of proceedings by way of Summons but upon failure of the offender to pay the modified penalty under the infringement notice proceedings may be commenced in Court without further notice.

20.22 INFRINGEMENT NOTICE PENALTIES

20.22.1 Notwithstanding any other provision of this section, the amount of the penalty, which may be provided in any infringement notice, shall not exceed –

- (a) \$500 for an offence involving a breach of a Local Law made under the Act; and

- (b) the maximum amount permitted under the relevant Act in respect of any of these Local Laws made under that Act.

20.22.2 Council may prescribe from time to time infringement notice penalties for any offence or class of offences under these Local Laws by an entry in the schedule at the end of these Local Laws. If no entry appears in the schedule for any offence, the infringement notice penalty is hereby prescribed as –

- (a) where no previous penalty is known to have been imposed under these Local Laws for that offence - \$50; and
- (b) where a previous penalty is known to have been imposed under these Local Laws for that offence, the penalty shall increase by \$25 for each repeat offence up to the maximum penalty of \$500.

20.22.3 Where a penalty is set out in the Schedule at the end of these Local Laws for any offence, that penalty shall be the penalty prescribed for that offence and in that case, the general infringement notice penalty in the proceeding subsection shall not apply.

20.23 The amount of the penalty which may be provided in any infringement notice shall not exceed:

- (a) \$500 for an offence involving a breach of a local law made under the Act; and the maximum amount permitted under the relevant Act in respect of any of these local laws made under that Act.

Division 4 - General Offence and Penalty Provisions

20.23 GENERAL PENALTY PROVISION

20.23.1 Any person failing to do any act directed to be done, or doing any act forbidden to be done by these Local Laws, or any notice or order under these Local Laws commits an offence.

20.23.2 The maximum penalty in respect of:

- (a) an offence involving a breach of any of these Local Laws made under the Act shall be \$5,000; and
- (b) an offence involving a breach of any of these Local Laws made under any other Act shall be the maximum penalty under that Act for a breach of local laws made under the authority of that Act.

20.23.3 Subject to subsection 20.23.2, any person who commits a first offence under these Local Laws shall be liable, if no inconsistent penalty is provided by these Local Laws or any other law:

- (a) a minimum penalty of \$100.00 and a maximum penalty of \$1,000.00; and
- (b) in addition, if the Court thinks fit, a minimum daily penalty of \$10.00 per day and a maximum daily penalty of \$100.00 per day.

20.23.4 Any minimum penalty or minimum daily penalty referred to in subsection 20.23.3 shall increase in severity by one-tenth for each successive breach of the same provision by the same offender but shall not in any event exceed the maximum provided in subsection 20.23.2.

20.23.5 The imposition of any penalty pursuant to these Local Laws shall not be inconsistent with or repugnant to any of the provisions of the Act or any other law in force, and in the case of inconsistency the other law shall apply.

20.24 SEIZURE OF ARTICLES UNDER PART III

An Authorised Person may in or on any place to which Part III applies, seize any device used for surf riding, including a surf-ski, surf-board, malibu board, or boat where the device is being used contrary to the provisions of these Local Laws.

20.25 Any device of the kind referred to in section 20.24 may be impounded after seizure for any period not exceeding 2 months as may be specified by the Authorised Officer to the person having the custody of such device immediately prior to the time of seizure.

20.26 Where such device is not claimed by the owner thereof within 2 months after the expiration of the period for which the device was impounded, the device may be sold by Council and the proceeds of such sale may be applied towards recouping the costs of and incidental to impounding it.

20.27 Where the costs referred to in section 20.26 exceed the cost of the impoundment then the excess shall be paid to the owner of the device or where the identity or whereabouts of that owner are unknown placed in a trust fund and dealt with in accordance with the relevant provisions of the Act.

Division 5 - General

20.28 No person shall, without the authority of Council, mark, set up or exhibit any sign purporting to be or resembling a sign marked, set up or exhibited by Council under the authority of these Local Laws.

20.29 Council shall not be liable or be held responsible for any injury, accident, loss, or damage whatsoever which occurs to or is sustained by any person, or any damage or loss to any private property, while on any public park, land, or public reserve or other public place whatsoever under the care, control and management of Council except in the case of negligence or breach of statutory duty by Council.