



WESTERN
AUSTRALIAN
GOVERNMENT
Gazette

ISSN 1448-949X

PRINT POST APPROVED PP665002/00041

239



PERTH, WEDNESDAY, 23 JANUARY 2013 No. 10 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 12.30 PM

© STATE OF WESTERN AUSTRALIA

TOWN OF MOSMAN PARK

DOG ACT 1976

DOGS LOCAL LAW 2012

HEALTH ACT 1911

HEALTH AMENDMENT LOCAL LAW 2012

LOCAL GOVERNMENT ACT 1995

REPEAL LOCAL LAW 2012

PARKING AND PARKING FACILITIES LOCAL LAW 2012

**LOCAL GOVERNMENT ACT 1995
DOG ACT 1976**

TOWN OF MOSMAN PARK

DOGS LOCAL LAW 2012

CONTENTS

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Commencement
- 1.3 Repeal
- 1.4 Definitions
- 1.5 Application

PART 2—IMPOUNDING OF DOGS

- 2.1 Charges and costs
- 2.2 Attendance of pound keeper at pound
- 2.3 Release of impounded dog
- 2.4 No breaking into or destruction of pound

**PART 3—REQUIREMENTS AND LIMITATIONS
ON THE KEEPING OF DOGS**

- 3.1 Dogs to be confined
- 3.2 Limitation on the number of dogs

PART 4—DOGS IN PUBLIC PLACES

- 4.1 Places where dogs are prohibited absolutely
- 4.2 Places which are dog exercise areas
- 4.3 Places which are dog exercise areas—restricted

PART 5—MISCELLANEOUS

- 5.1 Offence to excrete

PART 6—ENFORCEMENT

- 6.1 Interpretation
- 6.2 Modified penalties
- 6.3 Issues of infringement notice
- 6.4 Failure to pay modified penalty
- 6.5 Payment of modified penalty
- 6.6 Withdrawal of infringement notice
- 6.7 Service

SCHEDULE 1

**LOCAL GOVERNMENT ACT 1995
DOG ACT 1976**

TOWN OF MOSMAN PARK

DOGS LOCAL LAW 2012

Under the powers conferred by section 49 of the *Dog Act 1976*, Subdivision 2 of Division 2 of Part 3 of the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Mosman Park resolved on 18 December 2012 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Town of Mosman Park Dogs Local Law 2012*.

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 Municipality of the Town of Mosman Park By-Law Relating to Dogs published in the *Government Gazette* on 12 November 1993 and as amended and published in the *Government Gazette* on 31 March 1994, 19 July 1996 and 7 August 1998 is repealed.

1.4 Definitions

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;

food business has the same meaning as in the *Food Act 2008*;

local government means the Town of Mosman Park;

owner has the same meaning as in the Act;

person liable for the control of the dog has the same meaning as in the Act;

pound keeper means a person authorised by the local government to perform all or any of the functions conferred on a “pound keeper” under this local law;

premises has the same meaning as in the Act;

Regulations means the *Dog Regulations 1976*;

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

town planning scheme means a town planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district; and

townsite has the same meaning as in the Act.

1.5 Application

This local law applies throughout the district.

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 pound keeper at pound

The pound keeper 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 Chief Executive Officer.

2.3 Release of impounded dog

(1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the Chief Executive Officer.

(2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, 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.

2.4 No breaking into or destruction of pound

A person who—

- (a) unless he or she is the pound keeper or a person authorised to do so, releases or attempts to release a dog from a pound; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof—
 - (i) any pound; or
 - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog,
 commits an offence.

Penalty: Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS

3.1 Dogs to be confined

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

- (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
- (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
- (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises and is fitted with a proper latch or other means of fastening it;
- (d) maintain the fence and all gates and doors in the fence in good order and condition; and
- (e) where no part of the premises consists of open space, yard or garden or there is no open space or 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) Where an occupier fails to comply with subclause (1), he or she commits an offence.

Penalty: Where the dog kept is a dangerous dog, \$2,000; otherwise \$1,000.

3.2 Limitation on the number of dogs

(1) This clause does not apply to premises which have been 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) 2 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated within a townsite; or
- (b) 4 dogs over the age of 3 months and the young of those dogs under that age if the premises are situated outside a townsite.

PART 4—DOGS IN PUBLIC PLACES

4.1 Places where dogs are prohibited absolutely

(1) Subject to section 8 of the Act and section 66J of the *Equal Opportunity Act 1984*, dogs are prohibited absolutely from entering or being in any of the following places—

- (a) a public building, unless permitted by a sign;
- (b) a theatre or picture gardens;
- (c) a food business registered under the *Food Act 2008*;
- (d) a public swimming pool; and
- (e) the following beaches, reserves and freehold land—
 - (i) Bay View Park—Lower (east of footpath);
 - (ii) Minim Cove Bush Block (fenced area);
 - (iii) Nash Field being Lot 89 of Reserve No. 1840;
 - (iv) Jabe Dodd Park being all that area of Reserve No. A1634 east and south of the continuation of Johnston Parade where it passes through Reserve No. A1634.

- (v) Section of Minim Cove Reserve located south of the cliff face which forms part of the area known as recreational reserves 1630, 1631, 31156, 31157, 17102 and portion of closed road bounded by Reserve 36788.

(2) If a dog enters or is in a place specified in subclause (1), every person liable for the control of the dog at that time commits an offence.

Penalty: Where the dog is a dangerous dog, \$2,000; otherwise \$1,000.

4.2 Places which are dog exercise areas

(1) For the purposes of sections 31 and 32 of the Act, the following are dog exercise areas—

- (a) Bay View Park—Upper including all of the grassed area located at the southern end, being all that area identified as Reserve No. A1666 and Reserve No. 8369 west of footpath extending to along the cliff face in a south easterly direction to the eastern end of the constructed Chine Place;
- (b) E G Smith Field being all that portion of Reserve No. A25466 contained within a line commencing at northwest corner of the Reserve and proceeding eastward for a distance of 100 metres along the northern boundary of the reserve then southward parallel to the western boundary of the Reserve to a point where it intersects with the elongation eastward of the southern boundary of Samson Street, Mosman Park, then westward along that elongation to the western boundary of the Reserve then northwards along the western boundary to the northwest corner of the Reserve;
- (c) Genders Park being recreational Reserve No. 32588 and bounded by McCabe Street in the south west and Beagle Street to the north;
- (d) Memorial Park being all that portion of Reserve No. A1634 west of the western boundary of Bay View Terrace, Mosman Park;
- (e) Minim Cove Park being recreational Reserves A1631, 31157, 31156, A1630, Reserve No. 17102 and portion of closed road bounded by Reserve No. 36788;
- (f) Mosman Beach Reserve being that section of recreational Reserve No. 18016 within the boundaries of the Town of Mosman Park west of the western boundary of Curtin Avenue;
- (g) Rope Works Park being recreational Reserve No. A38300 on the corner of Rope Walk and Village Place shown as Mosman Park Lots 632 and 633;
- (h) Stringfellow Park being the whole of recreational Reserve No. 33847 described as North Fremantle Lot 396;
- (i) Point Roe Park being the whole of recreational Reserve No. 45666

(2) Subclause (1) does not apply to—

- (a) land which has been set apart as a children's playground; and
- (b) a car park.

4.3 Places which are dog exercise areas—restricted

(1) For the purposes of sections 31 and 32 of the Act, the following are dog exercise areas unless the area is being used for sporting and other activities, as permitted by the local government, during the times of such use—

- (a) Davis Oval being all that area of Reserve No. A1840 north of the elongation east of the northern boundary of Reserve No. 22633;
- (b) Tom Perrot Reserve being all that area of Reserve No. 36788;
- (c) Mann Oval being all that area of Reserve No. 17986 (except between 8:00 am and 5:00 pm).

(2) Subclause (1) does not apply to—

- (a) land which has been set apart as a children's playground;
- (b) a car park.

(3) Whether or not in a dog exercise area, a dog must at all times, in the opinion of an authorised person, be under effective control of the person liable for the control of the dog.

(4) Whether or not in a dog exercise area, a dog shall not be a nuisance either of itself or together with other dogs whether or not in the same ownership.

(5) A dog shall be taken to be a nuisance for the purposes of subsection (4) if it behaves in a manner, which has a disturbing effect on the state of reasonable physical, mental or social wellbeing of a person.

(6) Where it is shown that a dog is not under effective control in contravention of subsection (3) or the dog is a nuisance in contravention of subsection (4) the person liable for control of the dog commits an offence.

Maximum Penalty: Dangerous Dog, \$2,000, otherwise, \$1,000

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.

Penalty: \$1,000.

(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.

PART 6—ENFORCEMENT

6.1 Interpretation

In this Part—

infringement notice means the notice referred to in clause 6.3; and

notice of withdrawal means the notice referred to in clause 6.6(1).

6.2 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 third 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 fourth 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.

6.3 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 7 of the First Schedule of the Regulations.

6.4 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.

6.5 Payment of modified penalty

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 penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment.

6.6 Withdrawal of infringement notice

(1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form of Form 8 of the First Schedule of the Regulations.

(2) A person authorised to issue an infringement notice under clause 6.3 cannot sign or send a notice of withdrawal.

6.7 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 6.2)

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
2.4	Breaking into or destruction of pound	200	400
3.1	Failing to provide means for effectively confining a dog	100	200
4.1(2)	Dog in place from which prohibited absolutely	200	400

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
4.3(3)	Failure to effectively control a dog in a designated dog exercise area	200	400
4.3(4)	Dog creating a nuisance in a designated dog exercise area	200	400
5.1(2)	Dog excreting in public place	250	

Dated 20 December 2012.

The Common Seal of the Town of Mosman Park was affixed by authority of a resolution of the Council in the presence of—

RONALD A. NORRIS, Mayor.
KEVIN POYNTON, Chief Executive Officer.
