

# **WARWICK SHIRE COUNCIL**

## **LOCAL LAW NO. 12**

### **(ROADSIDE VENDING AND THE USE OF ROADS AND FOOTWAYS)**

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## PART 1 – PRELIMINARY

### Citation

1. This Local Law may be cited as Warwick Shire Council Local Law No. 12 (Roadside Vending and the Use of Roads and Footways).

### Objects

2. The objects of this Local Law are to regulate the use of roads and associated public places for -
  - a. business;
  - b. stalls;
  - c. busking;
  - d. advertising of any business;
  - e. placing or maintaining any advertising device;
  - f. placing, stacking, storing or exposing of goods;
  - g. planter boxes;
  - h. standing vehicles on footways.

### Definitions

3. In this Local Law -

**"authorised person"** means a person authorised by the local government to exercise the powers of an authorised person under this Local Law.

**"advertising"** includes advertising by distribution of any handbill or other printed or written matter.

**"advertising device"** means:-

- a. a movable advertising device;
- b. an advertising device in, on or attached to a vehicle when the vehicle is used apparently for the principle purpose of advertising;
- c. any handbill, poster or notice, or any markings on a road, or any sign of any kind whatsoever of the nature of an advertisement;

but does not include advertising device within the meaning of that expression in the definition of "operational work" in the *Integrated Planning Act 1997*.

**"business"** means any of:-

- a. the sale or commercial supply of goods or services (including food or drink or both);
- b. the setting up on, or bringing onto, a road of a stall, vehicle, equipment or other thing for the sale or commercial supply of goods or services.

**"busking"** means a performance by a musician, dancer or actor on a footway.

**"carriageway"** means a road or that portion of a road formed, prepared, or set aside for the use of vehicles, and is not intended to exclude the use of such a road or such portion of a road by pedestrians when necessary.

**"compliance notice"** see Section 29(1) of this Local Law.

“**expose**” in relation to goods includes expose in a vehicle, by hand, or on a stall or other structure.

“**fixed planter box**” means a fixture in a road designed or used for planting and maintaining the growth of trees, shrubs or plants, but does not include any such item if it constitutes a fixed structure under the *Building Act 1975*.

“**footway**” includes that part of a road set apart for the use of pedestrians and every pavement, lane, thoroughfare or other part of a road habitually used by pedestrians and not by vehicles.

“**permit**” means permit under Part 2 of this Local Law.

“**placing**” in relation to goods does not include the parking of vehicles in accordance with the *Traffic Regulations 1962* or the setting down of goods for a period that is no longer than necessary for housing or removing such goods.

“**planter box**” means a container designed or used for planting and maintaining the growth of trees, shrubs or plants.

“**road**” includes -

- a. a State-controlled road under the *Transport Infrastructure Act 1994*; and
- b. a mall; and
- c. a footway; and
- d. a square, court or other public place under the local government's control that is declared under the Local Law policies to be subject to this Local Law.

“**stall**” means any stall, stand or other structure or contrivance used for the display and/or sale of goods or for the pursuit of any business, including the sale of art union tickets or for the public dissemination of information on matters of local interest or for the receipt of petitioner's signatures.

## PART 2 - PERMITS

### Requirement to Hold Permit<sup>1</sup>

4. (1) A person must not on or in a road, unless authorised by a permit:-
  - (a) carry on a business;
  - (b) set-up or conduct any stall;
  - (c) engage in busking;
  - (d) place any advertising device;
  - (e) engage in advertising of any business;
  - (f) place, stack, store or expose any goods;
  - (g) place any planter box or install any fixed planter box.

Maximum penalty - 20 penalty units.

- (2) However, a permit is not required under this Local Law for business on part of a road if the person carrying on the business is authorised by a permit under the *Land Act 1994* to occupy the relevant part of the road for carrying on the business.

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<sup>1</sup> A person who carries on business as a hawker will need a licence under the *Hawkers Act 1984* as well as a permit under this Local Law. (See section 5(5) of the *Traffic Act 1949*.)

### Application for Permit

5. An application for a permit must include or be accompanied by -
- (a) details of the nature, time and place of the proposed activities for which the permit is sought; and
  - (b) if the applicant wants to use a particular part of a road for serving food or drink or for other business purposes - a plan showing the relevant part of the road; and
  - (c) other information and material required under Local Law policies;
  - (d) any prescribed fee.

### Grant of Permit

6. (1) The local government may grant a permit if satisfied that -
- (a) the activities for which the permit is sought would not unduly interfere with the proper use of a road; and
  - (b) if criteria for the grant of a permit have been laid down under Local Law policies - the grant of the permit is consistent with the relevant criteria.
- (2) A Local Law policy may specify criteria for the grant of a permit.
- (3) A permit cannot be granted for a State-controlled road unless the chief executive of the department which administers of the *Transport Infrastructure Act 1994* agrees in writing.
- (4) A permit cannot authorise the holder of the permit to carry out building work or do anything else that constitutes development under the *Integrated Planning Act 1997*.
- (5) A permit:-
- (a) is held personally by the holder and does not attach to any land;
  - (b) may regulate the holder and the holder's employees insofar as the holder uses any employees for the purpose of any activity mentioned in section 4(1) of this Local Law;
  - (c) must be obtained for the ongoing conduct of those activities, irrespective of whether any development approval has issued which:-
    - (i) permits the commencement of those activities if such commencement constitutes a development under the *Integrated Planning Act 1997*; or
    - (ii) also regulates the ongoing conduct of those activities.

### Term of Permit

7. (1) A permit may be granted for a specified occasion or for a specified term.
- (2) If a permit is granted for a specified term, the local government may, from time to time, on application by the holder of the permit, renew the permit.
- (3) The term for which a permit is granted or renewed is to be -
- (a) fixed as required by a relevant Local Law policy; or
  - (b) in the absence of a relevant Local Law policy - decided by the local government when it grants the permit or the renewal.

## Conditions of Permit

8. (1) A permit may be granted on conditions the local government considers appropriate.
- (2) The conditions of a permit may, for example -
- (a) limit the activities authorised by the permit to a single specified location or to a specified area;
  - (b) require the holder of the permit to display the permit in a specified position or to produce the permit for inspection on demand by an authorised person;
  - (c) require the holder of the permit to take specified measures to protect the safety of persons who may be involved in, or affected by, the activities authorised by the permit;
  - (d) require the holder of the permit to take out insurance against personal injury or property damage resulting from activities authorised by the permit;
  - (e) require the holder of the permit to take specified measures to ensure that the activities authorised by the permit do not cause a nuisance;
  - (f) if the permit authorises the holder of the permit to use a specified part of a road for carrying on a business - require the holder of the permit to pay specified rental to the local government at specified intervals.

*Example of a condition under subsection (2)(e) -*

*If a permit authorises use of a road for serving food or drink, the condition could, for example, require the holder of the permit to provide and maintain receptacles for waste and to clean the area thoroughly at the conclusion of business on each day.*

- (3) The local government may, by Local Law policy, prescribe conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

## Power to Change Conditions of Permit

9. (1) the local government may, by written notice given to the holder of a permit, change<sup>2</sup> the conditions of the permit.
- (2) However, the local government may only change the conditions of a permit if -
- (a) the holder of the permit agrees to the proposed change; or
  - (b) the change is urgently necessary in the interests of safety or to prevent a nuisance; or
  - (c) the change is necessary to allow for roadworks; or
  - (d) the local government -
    - (i) gives the holder of the permit written notice of the proposed change inviting the holder to make written representations about the proposed change within a reasonable time fixed in the notice; and
    - (ii) if the holder of the permit makes written representations within the time allowed in the notice - takes the representations into account.

<sup>2</sup>

A "change" to the conditions of a permit includes a change by omission, substitution or addition. (See *Acts Interpretation Act 1954, s.36*)

### Compliance with Conditions of a Permit

10. The holder of a permit must ensure that the conditions of a permit are complied with.

Maximum penalty - 50 penalty units.

### Transfer of Permit

11. (1) The holder of a permit may, with the local government's approval, transfer the permit to another person.
- (2) The local government may impose conditions on the transfer of a permit.
- (3) However, the local government cannot -
- (a) unreasonably refuse to approve the transfer of a permit; or
  - (b) impose unreasonable conditions on the transfer of a permit.

### Retention of Permit

12. A person who holds a permit must keep such permit or a copy thereof on their person or in ready proximity to the place where the activity permitted is conducted so as to be readily available for inspection by an authorised person at any time that the activity is being conducted.

Maximum penalty: 10 penalty units

### Chief Executive May Give Directions

13. The local government must comply with directions and guidelines issued by the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994* about the exercise of its powers under this Local Law over permits for State-controlled roads.

## PART 3 - VEHICLES

### Vehicles Other Than On Carriageways

14. (1) A person must not stand a vehicle on any part of a road other than a carriageway, except -
- (a) for the purposes of opening or closing any gate through which the vehicle is to pass or has just passed; or
  - (b) where the vehicle has broken down and it is necessary for the safety of the vehicle or any person repairing the vehicle or any other users of the road that the vehicle not be on the carriageway; or
  - (c) in the event of any emergency; or
  - (d) with the written approval of the local government.

Maximum penalty: 20 penalty units

- (2) Any person in control of a vehicle must remove the vehicle standing in accordance with the exceptions in preceding section 14(1)(a), (b) and (c) as soon as practicable.

Maximum penalty: 20 penalty units

- (3) The local government may only, but is not bound to, grant approval under this section if satisfied that the approval does not enable parking or standing of a vehicle in conflict with section 55(1)(b) of the *Traffic Regulations 1962*.

## Sale of Vehicles

15. (1) A person must not -
- (a) leave standing any vehicle on any road in connection with an offer to sell that vehicle, or for the purposes of selling that vehicle;
  - (b) sell or offer for sale any vehicle left standing on any road.

Maximum penalty: 20 penalty units

- (2) For the purposes of this section, a vehicle is deemed left standing on a road, in connection with an offer to sell if it displays or has attached any “for sale” or like sign, or any telephone number when it can reasonably be inferred that the owner is offering the vehicle for sale.

## PART 4 - REMOVAL & IMPOUNDING

### Definitions

16. In this part unless inconsistent with the context -

“**apparent controller**” in relation to any goods means a person whom an authorised person believes on reasonable grounds is a controller of those goods.

“**controller**” in relation to goods means -

- (a) an owner of the goods;
- (b) a person who (either alone or with others) has authority to control over those goods (for example a director, manager or employee of an owner).
- (c) a person (either alone or with others) in lawful possession of those goods, whether under a lease, hiring agreement, bailment or otherwise.

“**infringing goods**” means goods on any road in apparent contravention of this Local Law.

### Powers For Infringing Goods

17. If an authorised person finds any infringing goods, the authorised person may -
- (a) give a direction to an apparent controller of those goods to remove the infringing goods from the road, footway or land under the control of the local government. A direction under the preceding section -
    - (i) may be oral;
    - (ii) must be given in circumstances which sufficiently identify the infringing goods (for example pointing at the infringing goods is sufficient identification);
    - (iii) must be given, either shortly before or after the authorised person:-
      - (A) displays to the apparent controller of the authorised person's identification card;
      - (B) states to the apparent controller that the authorised person is authorised by the Shire of Warwick to direct removal of goods from any road and that failure to comply with a direction will result in the apparent controller committing an offence against this Local Law;
  - (b) if there is no apparent controller of the goods, or an apparent controller cannot reasonably be found, the authorised person may impound the goods;

- (c) if there is an apparent controller and the apparent controller fails or refuses to comply with an authorised person's direction under this part, the authorised person may impound the goods.

### **Offence**

18. If an apparent controller of goods fails to comply with a direction under this part, then unless the apparent controller -

- (a) was not a controller of the goods; or
- (b) was acting under the direction of the controller of the goods; or
- (c) otherwise has a lawful excuse;

the apparent controller commits an offence against this Local Law.

Maximum penalty: 20 penalty units

### **Manner of Impounding**

19. (1) Impounding of goods under this part may be effected by -

- (a) using such force as is reasonably necessary, either alone or with the assistance of any other person, to take or retain the goods;
- (b) the authorised person laying hands on the goods concerned and, if there is an apparent controller, stating to the apparent controller that the goods are impounded.

- (2) After impounding goods in accordance with this Local Law, an authorised person may, as agent of the local government, retain possession of the goods to the exclusion of any other person and remove the goods concerned to a place of retention prescribed by the local government for the purposes of this Local Law.

### **Perishable Goods**

20. If the impounded goods are of a perishable nature, the Chief Executive Officer may order the disposal of the goods as the Chief Executive Officer thinks fit.

### **Notice to Apparent Controller**

21. Within seven days after impounding of any goods under this Local Law, the authorised person must inform an apparent controller of the goods in writing of -

- (a) the impounding of the goods;
- (b) that the goods may be released on payment of the prescribed release fee and any costs of removal and storage;
- (c) the costs of removal or storage incurred by the local government;
- (d) where the goods may be released;
- (e) that if the goods are not released within 30 days, they may be sold by public auction or tender.

## Apparent Controller

22. Where an authorised person is not able to establish who is an apparent controller of impounded goods, then unless the goods are of such value that the authorised officer reasonably expects that the local government will not recover its expenses under this part, the notice under the preceding section must in addition -

- (a) be addressed “to whom it may concern”;
- (b) be published in a newspaper circulating generally in the Shire of Warwick;
- (c) include a description of the goods;
- (d) state the person entitled to the goods is unknown;
- (e) state that to obtain release the person entitled must provide a statutory declaration and such other proof of entitlement as the local government may reasonably require.

and a copy of the notice must be:-

- (i) delivered to the police station nearest to where the goods were located;
- (ii) be posted in a prominent place at the office of the local government.

## Value

23. In coming to any opinion as to the value of any goods under this Local Law, the authorised person concerned may, but is not bound to, take the advice of any person with experience of the value of new or used goods of the type in question.

## Release

24. On a person entitled to the impounded goods providing evidence of entitlement and tendering the release fee and any costs of seizure, transport, storage and publication, the local government must release the impounded goods to the person entitled.

## Sale

25. (1) Where impounded goods have not been released within 30 days of the last of any notices required in respect of those goods under this Local Law, the local government may -
- (a) sell the goods concerned by public auction or tender;
  - (b) where the goods are apparently value of less than the authorised officer’s reasonable opinion as to Council’s expenses under this Part in relation to those goods, dispose of the goods in such manner as the local government thinks fit.
- (2) (a) The local government may use the proceeds of sale towards any expenses incurred by its exercise of its powers (including an authorised person’s powers) under this Local Law in connection with the goods concerned.
- (b) The balance of the proceeds, if any, must be held by the local government and claimed by the person entitled, or otherwise dealt with in accordance with law.

## Infringement Notice

26. An authorised person may issue an infringement notice to an apparent controller of goods for an offence under the preceding part.

### **Statutory Declaration On Infringement Notice**

27. If a person receives an infringement notice for the offence of failing to comply with a direction by an authorised person under the preceding part of this Local Law and -

- (a) the person did not fall within any of the definitions of a controller of goods; or
- (b) if the person was an employee or manager of a controller of those goods, and the person's failure to comply with the direction was as the result of another direction by or on behalf of that person's employer; or
- (c) the person otherwise has a lawful excuse for failing to comply with the authorised person's direction;

the person may tender a statutory declaration to that effect to the Chief Executive Officer. In the case of a person seeking to establish -

- (d) subsection (b) of this section, the person must also include in that declaration full particulars of the direction given by or on behalf of that person's employer including-
  - (i) the actual person who gave the direction;
  - (ii) whether the direction was oral or in writing, and if in writing, identifying the writing giving the direction;
  - (iii) the date the direction was given;
  - (iv) the material terms of the direction;
- (e) subsection (c) of this section, the person must also include in that declaration full particulars of that lawful excuse.

### **Withdrawal Of Infringement Notice**

28. Where the Chief Executive Officer is satisfied as a result of a statutory declaration that a person who received an infringement notice under this part -

- (a) was not a controller of the goods; or
- (b) was acting under the direction of that person's employer; or
- (c) otherwise has a lawful excuse;

the Chief Executive Officer may be notice in writing to that person withdraw the infringement notice.

## **PART 5 – ENFORCEMENT**

### **Compliance Notices**

29. (1) If a person contravenes a provision of this Local Law or a condition of the permit, an authorised person may give the person a written notice (a "compliance notice") under this section.

(2) A compliance notice may -

- (a) if the contravention is of a continuing or recurrent nature - require the person to stop the contravention; and
- (b) whether or not the contravention is of a continuing or recurrent nature - require the person to take specified action, within a time specified in the notice, to remedy the contravention.

(3) Immediate action to remedy a contravention may be required if it is necessary to avoid a risk to public safety.

- (4) A person to whom a compliance notice is given must comply with the notice.

Maximum penalty - 50 penalty units.

### **Suspension or Cancellation of Permit**

30. (1) If the holder of a permit contravenes this Local Law or a condition of the permit, the local government may, by written notice to the holder, suspend or cancel the permit.
- (2) However, the local government may only suspend or cancel a permit if -
- (a) the suspension or cancellation is urgently necessary in the interests of safety or to prevent a nuisance; or
  - (b) the suspension or cancellation is necessary to allow for roadworks; or
  - (c) the local government -
    - (i) gives the holder of the permit written notice of the proposed suspension or cancellation inviting the holder to make written representations about the proposed action within a reasonable time fixed in the notice; and
    - (ii) if the holder of the permit makes written representations with the time allowed in the notice - takes the representations into account.

## **PART 6 - MISCELLANEOUS**

### **Miscellaneous Offences**

31. A person must not -
- (a) impede or interfere with an authorised person's exercise of powers under this Local Law;
  - (b) take or attempt to take possession of any impounded goods.
- Maximum penalty: 20 penalty units.

### **No Liability For Acts In Good Faith**

32. The local government, its employees and any authorised persons are not responsible at the suit of any person for anything done in good faith without negligence under this Local Law, and without limiting the generality of this clause are not responsible -
- (a) for any injury suffered by any person in connection with an impounding;
  - (b) any loss of any impounded goods by a person entitled if -
    - (i) the goods or the proceeds of their sale have been released to a person who is not the person entitled;
    - (ii) if the goods are sold or disposed of in accordance with this Local Law.

### **Fees, Charges And Forms**

33. The local government may, by resolution, prescribe such fees, charges and forms as it deems necessary for the purpose of this Local Law.

## PART 7 - LOCAL LAW POLICIES

### Local Law Policies

34. The local government may make Local Law policies about -
- (a) public places under the local government's control declared to be roads for the purposes of this Local Law;<sup>3</sup> or
  - (b) the information and materials that must be included in or accompany an application for a permit;<sup>4</sup> or
  - (c) criteria with which business activities on roads must comply;<sup>5</sup> or
  - (d) the term for which a permit is to be granted or renewed;<sup>6</sup> or
  - (e) conditions that must, or will ordinarily, be imposed in a permit;<sup>7</sup> or
  - (f) other matters about which this Local Law specifically allows for the making of Local Law policies.

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<sup>3</sup> See definition of "**road**" in section 3.

<sup>4</sup> See section 5(c).

<sup>5</sup> See section 6(2).

<sup>6</sup> See section 7(3)(a).

<sup>7</sup> See section 8(3).