

MCKINLAY SHIRE COUNCIL

LOCAL LAW NO. 5

KEEPING AND CONTROL OF ANIMALS

TABLE OF CONTENTS

PART 1 - PRELIMINARY

1. Citation
2. Objects
3. Repeal
4. Definitions
5. Relationship with other laws

PART 2 - KEEPING OF ANIMALS

Division 1 - Animals for which permit is required

6. Requirement to hold permit
7. Obligations to hold permit

Division 2 - Animals for which registration is required

8. Requirement to register animal
9. Obligation to register
10. Application to register

Division 3 - Prohibited animals.

11. Prohibited animals
12. Prohibited animals must not be kept

Division 4 - Minimum standards

13. Prescription of minimum standards by local law policy
14. Obligation to comply with minimum standards

Division 5 - Permits

16. Criteria for application of permit
17. Term of permit
18. Conditions of permits

PART 3 - CONTROL OF ANIMALS

Division 1 - Animals in public

19. Animal must be under effective control
20. Dangerous dogs
21. Dogs on heat to be excluded from public places
22. Person in charge of an animal to clean up animal faeces

Division 2 - Duty to provide proper enclosure.

23. Duty to provide proper enclosure

Division 3 - Nuisances etc

24. Duty to avoid nuisances

25. Dog Barking

Division 4 - Aggressive animals.

26. Attack etc

Division 5 - Dangerous dogs

27. Declaration of dangerous dog

PART 4 - DESTRUCTION OF ANIMALS

28. Destruction orders
29. Appeal against destruction order
30. Powers of court on appeal
31. Summary destruction of animal
32. Destruction at request of keeper

PART 5 - MISCELLANEOUS

33. Prohibition of identifying tags designed to confuse
34. Abandonment of animals

PART 6 - LOCAL LAW POLICIES

35. Local law policies

PART 1 - PRELIMINARY

1. Citation

This local law may be cited as Local Law No. 5 (Keeping and Control of Animals).

2. Objects

The objects of this local law are to regulate the keeping of animals:

- (a) to protect the community against risk of injury and damage; and
- (b) to ensure that animals do not create a nuisance, or a hazard to health or safety; and
- (c) to prevent pollution and other environmental damage resulting from the keeping of animals and to protect the amenity of the local environment; and
- (d) to ensure that animals are kept and used in a way that is consistent with the rights and expectations of the local community.

3. Repeal

This local law repeals Local Law No. 11A (Keeping and Control of Animals).

4. Definitions

In this local law:

"animal" includes a fish, bird or reptile but does not include an animal of a species excluded by a local law policy from the application of this local law;

"dangerous dog" means a dog:

- (a) of a breed or type classified by a local law policy as a dangerous dog; or
- (b) declared under this local law to be a dangerous dog;

"identifying tag" means a mark or object to identify an animal including, for example:

- (c) a metal or plastic, disc or plate; or
- (d) a collar; or
- (e) a tattoo or brand; or
- (f) an implant bearing an electronic code;

"keeper" of an animal means:

- (a) the person who has the immediate custody and control of the animal; or
- (b) if the person who has the immediate custody and control of an animal is a minor, the minor's parent or guardian; or
- (c) the occupier of the land on which the animal is ordinarily kept.

"security" means a sum of money determined by the Chief Executive Officer to cover the costs and expenses reasonably expected to be incurred by the local government in keeping a dog subject to a destruction order, pending the determination of any appeal under Part 4.

5. Relationship with other laws

This local law is in addition to, and does not derogate from:

- (a) laws regulating the use or development of land; and
- (b) other laws about the keeping or control of animals of a particular species.

PART 2 - KEEPING OF ANIMALS

Division 1 - Animals for which permit is required

6. Requirement to hold permit

- (1) A local law policy may require a permit for the keeping of animals.
- (2) The requirement for a permit may be imposed by reference to 1 or more of the following factors:
 - (a) the species, breed, age or sex of the animals;
 - (b) the number of animals to be kept;
 - (c) the area, or part of the area, in which the animals are to be kept;
 - (d) the nature of the premises in which the animals are to be kept.

7. Obligations to hold permit

- (1) A person must not keep an animal for which a permit is required unless the person holds a current permit from the local government authorising the person to keep the animal.

Maximum Penalty - 20 penalty units

- (2) A person must not contravene a condition of a permit.

Maximum Penalty - 20 penalty units

Division 2 - Animals for which registration is required

8. Requirement to register animal

- (1) A local law policy may require the keeper of an animal of a particular species or breed to have the animal registered.
- (2) If a local law policy requires the keeper of an animal of a particular species or breed to have the animal registered, then the keeper of the animal must apply to have the animal registered within the time period stated under a local law policy.

Maximum Penalty - 20 penalty units

9. Obligation to register

- (1) A person must not keep an animal for which registration is required unless the person holds a current certificate of registration for the animal from the local government.

Maximum Penalty - 20 penalty units

- (2) A person who keeps a registered animal must ensure that the animal carries the identifying tag required under a local law policy.

Maximum Penalty - 20 penalty units

10. Application to register

An application for the registration of an animal must include or be accompanied by:

- (a) the name of the keeper of the animal; and
- (b) the address at which the animal is to be kept; and
- (c) the breed of the animal; and
- (d) the description of the animal including colour, markings, sex and age; and
- (e) any other information and materials required under a local law policy.

Division 3 - Prohibited animals

11. Prohibited animals

- (1) The local government may, by local law policy, prohibit the keeping of animals.
- (2) The prohibition may be imposed by reference to 1 or more of the following factors:
 - (a) the species, breed, age or sex of the animals;
 - (b) the number of animals to be kept;
 - (c) the area, or part of the area, in which the animals are to be kept;
 - (d) the nature of the premises in which the animals are to be kept.

12. Prohibited animals must not be kept

A person must not keep an animal contrary to a prohibition under Section 11.

Maximum Penalty - 20 penalty units

Division 4 - Minimum standards

13. Prescription of minimum standards by local law policy

- (1) A local law policy may prescribe minimum standards for the keeping of animals in particular areas or a particular species of animals.
- (2) A local law policy may, for example:
 - (a) require the regular cleaning of enclosures and the disposal of waste;

- (b) require adequate provision of food and water;
- (c) require the provision of adequate space for the animals;
- (d) provide for the separation of enclosures in which animals are kept from places used for human habitation or the preparation of food, or from watercourses or water catchment areas; and
- (e) make other provisions for the maintenance of proper standards of cleanliness and hygiene.

14. Obligation to comply with minimum standards

- (1) A person who keeps an animal must ensure that the relevant minimum standards prescribed by a local law policy are complied with.

Maximum Penalty - 20 penalty units

- (2) If a person is required to hold a permit to keep an animal, the obligation to comply with the minimum standards prescribed by a local law policy is in addition to obligations imposed by condition of the permit.

Division 5 - Permits

15. Application for Permit

- (1) An application to the local government for a permit for the keeping of an animal must include or be accompanied by:
 - (a) the name and address of the applicant;
 - (b) details of the species, breed, age or sex of the animal(s);
 - (c) details of the number of animals) to be kept;
 - (d) location in which the animal(s) are to be kept;
 - (e) details of the area or enclosure in which the animals) are to be kept;
 - (f) whether the owner(s) of adjoining premises to the location where the animals) are proposed to be kept have stated in writing they have no objections to the keeping of the animal(s) at the location;
 - (g) other information and material required under a local law policy.

16. Criteria for application of permit

In deciding whether to grant a permit authorising a person to keep animals the local government may have regard to:

- (a) the physical suitability of the land for the proposed use;
- (b) the structural suitability of enclosures in which the animals are to be kept;

- (c) the likelihood of the animals causing nuisance, inconvenience, or annoyance to the occupiers of adjoining land;
- (d) the likely effect on the amenity of the surrounding area;
- (e) the likely effect on the local environment and any possible pollution or other environmental damage;
- (f) other factors that may be relevant in the circumstances of the particular case; and
- (g) any other criteria required under a local law policy.

17. Term of permit

- (1) A permit is granted for a term fixed under a local law policy.
- (2) 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 must be fixed as required by a local law policy, or as decided by the local government when it grants the permit or the renewal.

18. Conditions of permits

- (1) The local government may grant a permit under this local law on conditions it considers appropriate.
- (2) The conditions may, for example:
 - (a) require the holder of the permit to care for the animals in accordance with appropriate standards;
 - (b) require that the animals be kept in enclosures that comply with specified structural requirements;
 - (c) require the holder of the permit to comply with specified standards of hygiene;
 - (d) require the holder of the permit to ensure that the animal wears or displays an appropriate identifying tag;
 - (e) require the holder of the permit to ensure that the animals do not cause nuisance, inconvenience or annoyance to others;
 - (f) require the holder of the permit to take specified action to protect against possible harm to the local environment;
- (3) The local government may, by a local law policy, prescribe conditions that may be imposed in a permit.

PART 3 - CONTROL OF ANIMALS

Division 1 - Animals in public places

19. Animal must be under effective control

- (1) A person must not bring or permit an animal to be brought into a public place unless the animal is under the person's effective control.

Maximum Penalty - 20 penalty units

- (2) A dog is not regarded as being under effective control unless:
- (a) a person who is physically able to control the dog is holding the dog by a leash; or
 - (b) the dog is tethered to a fixed object and is under the continuous supervision of a person who is physically able to control the dog; or
 - (c) the dog is participating in an obedience trial, or training for an obedience trial, under the supervision of an organisation recognised by the local government for the purposes of this section; or
 - (d) the dog is being exhibited at an exhibition under the supervision of an organisation recognised by the local government for the purposes of this section.
- (3) If an animal in a public place is not under effective control, an authorised person may seize and impound the animal.

20. Dangerous dogs

- (1) A dangerous dog must not be brought into a public place by a person under the age of 18 years.

Maximum Penalty - 20 penalty units.

- (2) A person must not bring a dangerous dog into a public place unless the dog is securely muzzled to prevent it from biting.

Maximum Penalty - 20 penalty units

- (3) An authorised person may seize and impound the dog if it is brought into a public place in contravention of sub-sections (1) and (2).

21. Dogs on heat to be excluded from public places

A person must not bring a dog that is on heat into a public place.

Maximum Penalty - 20 penalty units

22. Person in charge of an animal to clean up animal faeces

If an animal defecates in a public place, the person in charge of the animal must immediately remove, and dispose of, the faeces in a sanitary way.

Maximum Penalty - 20 penalty units

Division 2 - Duty to provide proper enclosure

23. Duty to provide proper enclosure

- (1) A person who keeps an animal must maintain a proper enclosure to keep the animal on the person's land and prevent the animal from wandering or escaping from the land.

Maximum Penalty - 20 penalty units

- (2) If an animal is found wandering at large, the owner of the animal is guilty of an offence.

Maximum Penalty - 20 penalty units

- (3) It is a defence to a charge of an offence against subsection (2) for the defendant to prove:
- (a) the defendant maintained an appropriate enclosure for the animal; and
 - (b) the defendant could not, by the exercise of reasonable diligence, have prevented the escape of the animal.

Division 3 - Nuisances etc.

24. Duty to avoid nuisances

- (1) A person must not keep an animal on land if:
- (a) the animal causes a nuisance, other than a nuisance under Section 25; or
 - (b) the animal exposes the health or safety of others to significant risk; or
 - (c) the animal creates a reasonable apprehension in the minds of others of a threat to their health and safety.

Maximum Penalty - 20 penalty units

- (2) A local government may, on receiving a complaint of a contravention of subsection (1), give a written notice to the keeper of the animal requiring the person to take specified action to prevent further contravention.

Examples:

- i) remove the animal from the premises;*
- ii) place the animal in a specified enclosure.*

- (3) A person must not fail to comply with a notice under subsection (2) within the time allowed in the notice.

Maximum Penalty - 20 penalty units

25. Dog Barking

- (1) A person must not keep a dog on land if the dog's barking causes a nuisance.

Maximum Penalty - 20 penalty units

- (2) A dog's barking causes a nuisance for the purposes of this section if:
- (a) written complaints in the prescribed form are received from three (3) residents of different properties; or
 - (b) an authorised person is of the opinion that the dog barking causes a nuisance.
- (3) A local government may for a contravention of subsection (1) give written notice to the keeper of the animal requiring the person to take specified action to prevent further contravention.

Examples:

- i) remove the animal from the premises:*
 - ii) ensure an anti-barking collar is fitted to the dog.*
- (4) A person must not fail to comply with a notice under subsection (3) within the time allowed in the notice.

Maximum Penalty - 20 penalty units

Division 4 - Aggressive animals

26. Attack etc

- (1) A person must not cause, encourage or permit an animal to attack or worry another person or other animal.

Maximum Penalty - 200 penalty units

- (2) If an animal attacks or worries a person or other animal, an authorised person may seize and impound the animal.
- (3) The authorised person may issue an order for the destruction of the animal seized and impounded under subsection (2). -

Division 5 - Dangerous dogs

27. Declaration of dangerous dog

- (1) If an authorised person is of the opinion that a dog is dangerous, the authorised person may declare the dog a "dangerous dog".

Examples of a dangerous dog include:

- i) if the dog has attacked or worried a person or an animal: or*
- ii) if the dog is likely to attack or worry a person or an animal: or*
- iii) if the dog has been trained to attack for the purpose of guarding either persons or property: or*
- iv) if the dog has been declared a dangerous dog by another local government.*

- (2) An authorised person may order the keeper of a dog to take specified action ("a dangerous dog order") if:
 - (a) the dog is declared dangerous under subsection (1); or
 - (b) the dog is of a breed or type classified as a dangerous dog by a local law policy.
- (3) Specified action may be:
 - (a) to warn persons who enter land on which the dog is kept of the presence of a dangerous dog on the land; and
 - (b) to ensure that the dog remains in secure custody and is unable to cause injury or damage to persons or other animals; and
 - (c) any other action as prescribed by local law policy.
- (4) A person must not fail to comply with a dangerous dog order under subsection (3).

Maximum Penalty - 100 penalty units

PART 4 - DESTRUCTION OF ANIMALS

28. Destruction orders

- (1) An authorised person may order the destruction of an animal if:
 - (a) the animal has attacked or threatened to attack a person or another animal; or
 - (b) the animal has created a nuisance; or
 - (c) the animal has put at risk the safety of motorists, cyclists, pedestrians or any other person; or
 - (d) the animal is subject to a dangerous dog order and the order is not complied with.
- (2) When an authorised person makes a destruction order under subsection (1), Section 26(3), the authorised person must, if the keeper of the animal is known to the authorised person, or can be ascertained from the local government's records, inform the keeper of the animal.
- (3) The destruction order must state that the keeper of the animal may, within 7 days after the destruction order is given, provide the local government with written reasons as to why the dog should not be destroyed.
- (4) Upon the expiration of the period referred to in subsection (3) the Chief Executive Officer will consider any written reasons and decide whether to confirm or withdraw the destruction order.
- (5) The Chief Executive Officer will notify the keeper of the animal of the decision within 7 days of receiving the written reasons.

- (6) Where the Chief Executive Officer decides to confirm the destruction order, the notice must state that the keeper of the animal has 14 days to pay to the local government the security and to appeal to the Magistrates Court against the order.

29. Appeal against destruction order

- (1) Subject to subsection (2) the keeper of an animal against which a notice issued under Section 28(5) confirming a destruction order has been made may appeal to a Magistrates Court against the order.
- (2) The right of appeal under subsection (1) does not arise until the keeper of the animal has first paid to the local government the security and any appeal lodged in reach of this subsection is not competent.
- (3) The appeal must be started within 14 days after the keeper is informed of the making of the order.
- (4) An appeal is instituted by filing a Complaint Made and Summons in the Magistrates Court under the Justices Act 1886.

30. Powers of court on appeal

- (1) Subject to subsections (2) and (3) on an appeal under this Part, the Court may:
 - (a) confirm or quash the order for destruction of the animal; and
 - (b) make any such order as it sees fit in relation to the security; and
 - (c) make any such other order as it sees fit.
- (2) The Court may only quash an order for destruction of an animal if satisfied that:
 - (a) the keeper will in future ensure that the animal is properly kept and controlled in accordance with this local law and the circumstances that led to the making of the order are unlikely to recur; and -
 - (b) if an order for destruction of the animal has previously been revoked by the Court, there are exceptional circumstances justifying quashing the order.
- (3) An order for the costs of an appeal may only be made against the local government if the Court is satisfied that the animal was unlawfully seized or there was no reasonable basis for making the order for the destruction of the animal.

31. Summary destruction of animal

- (1) An authorised person may seize and destroy an animal without notice to the keeper of the animal if:
 - (a) the animal has been seized and detained more than 3 times in the last year; or
 - (b) the animal is, in the authorised person's opinion, dangerous and not controllable by means that are reasonably available to the keeper of the animal; or

- (c) it is the authorised person's reasonable belief that the keeper of the animal has taken an impounded animal from the pound without the local government's authority; or
- (d) the animal is diseased or emaciated.

32. Destruction at request of keeper

An authorised person may, at the request of the keeper of an animal, seize and destroy the animal.

PART 5 - MISCELLANEOUS

33. Prohibition of identifying tags designed to confuse

A person must not manufacture, sell, or have in possession for sale, identifying tags for animals designed to be confused with the identifying tags required for animals under this local law.

Maximum Penalty - 20 penalty units

34. Abandonment of animals

- (1) A person must not abandon an animal.

Maximum Penalty - 20 penalty units

- (2) A person who delivers an animal into the custody of the authorised person in charge of an animal pound is not to be regarded as having abandoned the animal.

PART 6 - LOCAL LAW POLICIES

35. Local law policies

The local government may make local law policies in relation to those matters about which this local law specifically allows for the making of local law policies.