

**McKINLAY SHIRE COUNCIL  
LOCAL LAW NO. 6  
(CONTROL OF ADVERTISING)**

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## PART 1 - PRELIMINARY

### 1. Citation

This local law may be cited as *Local Law No. 6 (Control of Advertising)*.

### 2. Objects

The objects of this local law is to ensure that advertisements and associated structures complement or, at least, do not unreasonably detract from, desirable characteristics of the natural and built environment in which the advertisements are exhibited.

### 3. Relationship with other laws

This local law is in addition to, and does not derogate from other laws about the control of advertising, including but not limited to the *Integrated Planning Act 1997*.

### 4. Definitions

In this local law:

**"advertisement"** means an advertisement or sign that is visible from a road or other public place and includes a structure that forms part of the advertisement or sign, or to which it is attached, or on which it is exhibited;

**"advertiser"** means a person:

- (a) by whom an advertisement is exhibited; or
- (b) whose business or place of business is advertised by the advertisement;

and includes a person who manages and controls, or has power to manage or control, the place in which the advertisement is exhibited;

**"authorised person"** means a person authorised by the local government to exercise the powers of an authorised person under this local law;

**"environmental protection policy"** means an environmental protection policy under the *Environmental Protection Act 1994*;<sup>1</sup>

**"permitted advertisement"** means an advertisement classified as a permitted advertisement under Part 3 (Permitted Advertisements);

**"the Act"** means the *Local Government Act 1993*.

## PART 2 - EXHIBITION OF ADVERTISEMENTS

### 5. Unlawful exhibition of advertisements

- (1) An advertiser must not exhibit an advertisement in the area unless:

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<sup>1</sup> Under Chapter 2 of the *Environmental Protection Act 1994*, the Minister responsible for the administration of that Act may prepare environmental policies about the environment or anything that affects or may affect the environment (See section 24 of the Act.

- (a) the advertisement is a permitted advertisement; or
  - (b) the advertiser has a permit for the exhibition of the advertisement from the local government.
- (2) If an advertiser exhibits an advertisement in contravention of subsection (1), the advertiser is guilty of an offence.

Maximum penalty - 50 penalty units.

### **PART 3 - PERMITTED ADVERTISEMENTS**

#### **6. Classification of advertisements**

- (1) The local government may, by local law policy:
- (a) classify advertisements by reference to criteria stated in the local law policy as permitted advertisements; or
  - (b) vary or revoke an earlier classification under this section.
- (2) The classification of advertisements as permitted advertisements may be based on 1 or more of the following criteria:
- (a) the nature, dimensions, design, structural form or other physical characteristics of the advertisement; and
  - (b) the content of the advertisement; and
  - (c) the part of the area in which the advertisement is to be exhibited; and
  - (d) the positioning of the advertisement in relation to:
    - i) an allotment boundary; or
    - ii) a building; or
    - iii) a road, footpath or other thoroughfare; or
    - iv) another physically identifiable point or line; and
  - (e) other criteria stated in the relevant local law policy.

#### **7. Conditions on which advertisements are classified as permitted advertisements**

- (1) The local government may, by local law policy, prescribe conditions on which advertisements of a particular class are classified as permitted advertisements.
- (2) The conditions may, for example:
- (a) require the advertiser to give the local government written notice containing specified information before, or within a specified period after, the advertisement is exhibited; and

- (b) require that a registration number allocated by the local government be affixed to the advertisement for as long as it is exhibited.

## **8. Compliance with conditions of classification**

If an advertiser exhibits a permitted advertisement, and a condition on which the advertisement is classified as a permitted advertisement is not complied with, the advertiser is guilty of an offence.

Maximum penalty - 20 penalty units.

## **PART 4 - ADVERTISING PERMITS**

### **9. Application for permit**

- (1) An application for a permit for the proposed exhibition of an advertisement in the area must set out:
  - (a) full details of the advertisement, including its contents, its design, its dimensions and its construction; and
  - (b) full details of when, where and how the advertisement is to be exhibited.
- (2) If a development permit is required for the advertisement under the *Integrated Planning Act 1997*, the application must be accompanied by evidence that the relevant permit has been granted, or an application for the relevant permit has been made.
- (3) If an advertisement is to be exhibited in a place that is not controlled by the advertiser, the application must be accompanied by the written consent of the owner and occupier of the place.

### **10. Grant of permit**

- (1) In deciding whether to grant a permit for an advertiser to exhibit an advertisement, the local government must have regard to:
  - (a) relevant submissions made by interested persons; and
  - (b) the public interest; and
  - (c) relevant Commonwealth, State or local government plans, proposals or agreements affecting the part of the area in which the advertisement is to be situated.
- (2) The local government may only grant a permit for an advertiser to exhibit an advertisement if:
  - (a) the advertisement is structurally sound; and

- (b) the advertisement causes no significant obstruction of, or distraction to, vehicular or pedestrian traffic<sup>2</sup>; and
  - (c) the exhibition of the advertisement is consistent with applicable environmental protection policies; and
  - (d) the dimensions of the advertisement bear a reasonable relationship to the dimensions of surrounding buildings and allotments so that:
    - i) its presence is not unduly dominating or oppressive; and
    - ii) it does not unreasonably obstruct existing views; and
  - (e) the advertisement is consistent, in colour and appearance, with buildings and natural features of the environment in which it is to be situated; and
  - (f) the advertisement is in other respects consistent with the character and values of the environment in which it is to be situated; and
  - (g) the approval is consistent with the local law policy.
- (3) The local government may, by local law policy:
- (a) prescribe criteria for the grant or refusal of permits for the exhibition of advertisements; and
  - (b) prohibit specified classes of advertisements, or prohibit the exhibition of advertisements in circumstances of a specified class.

## **11. Term of permit**

- (1) A permit is granted for a term specified in the permit.
- (2) The local government may, from time to time, on application by the advertiser, renew a permit for a further term.
- (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.

## **12. Conditions of permit**

- (1) A permit may be granted on conditions the local government considers appropriate.
- (2) The conditions may, for example:
  - (a) regulate the materials out of which the advertisement is to be constructed; or
  - (b) regulate the dimensions of the advertisement; or

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<sup>2</sup> A local government in granting a permit to an advertiser to exhibit an advertisement is bound by section 41 of the *Transport Infrastructure Act 1994*, to the extent to which that section applies.

- (c) require the periodic painting or external treatment of the advertisement; or
  - (d) require the securing of the advertisement in a specified way; or
  - (e) regulate the positioning of the advertisement in relation to the boundaries of land, or a building or structure, on which it is situated or a road or other public place; or
  - (f) regulate how the advertisement is to be illuminated and the intensity of illumination.
- (3) However, the conditions of the permit must be consistent with the conditions of any statutory authorisation or approval for the establishment of the advertisement.
- (4) The local government may, by local law policy, prescribe conditions that may be imposed on a permit.

### **13. Compliance with conditions of permit**

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

Maximum penalty - 20 penalty units.

## **PART 5 - ENFORCEMENT**

### **14. Obligation to maintain**

- (1) If an authorised person is of the opinion that an advertisement is not in good order and repair, or is unsightly, the authorised person may, by notice in writing, require the advertiser to carry out specified work to put the advertisement into good order or repair, or to remedy the unsightly condition of the advertisement.
- (2) An advertiser must comply with a notice under subsection (1) within the time allowed in the notice.

Maximum penalty - 50 penalty units.

- (3) However, if an advertiser removes an advertisement within the time allowed in the notice, the advertiser is taken to have complied with the notice.

### **15. Removal of advertisements unlawfully exhibited**

- (1) If an advertisement is exhibited in contravention of this local law or a condition imposed under this local law, an authorised person may, by written notice to the advertiser, require the advertiser to remove the advertisement within a time specified in the notice.
- (2) The local government may withdraw a notice under this section if, within the time allowed for removal of the advertisement, the advertiser obtains the necessary permit for exhibition of the advertisement or takes other necessary action to ensure that the advertisement is lawfully exhibited.

- (3) An advertiser must comply with a notice under subsection (1) within the time allowed in the notice.

Maximum penalty - 50 penalty units.

#### **16. Notice to remove in other cases**

- (1) If:
  - (a) the character of a particular part of the area changes as a result of commercial or residential development or for another reason, and the exhibition of an advertisement is no longer consistent with the character of the relevant part of the area; or
  - (b) an advertisement is exhibited in a particular part of the area and the advertisement, in conjunction with other advertisements exhibited by the same or other advertisers, seriously detracts from the character of the relevant part of the area,

the local government may, by written notice, require the advertiser to remove the advertisement.

- (2) An advertiser must comply with a notice under subsection (1) within the time allowed in the notice.

Maximum penalty - 50 penalty units.

#### **17. Local government's powers on default**

- (1) If a person fails to comply with a notice under this Part within the time allowed in the notice, the local government may remove and dispose of the advertisement.
- (2) An authorised person acting on the local government's instructions may carry out demolition or other work that may be necessary to remove the advertisement.

#### **18. Removal without notice**

- (1) If:
  - (a) an advertisement is exhibited in contravention of this local law or a condition imposed under this local law and there are, in the opinion of an authorised person, adequate reasons for removing the advertisement immediately; or
  - (b) an advertisement creates, in the opinion of an authorised person, a risk to life or property,

the local government may remove and dispose of the advertisement.

- (2) An authorised person acting on the local government's instructions may carry out demolition or other work that may be necessary to remove the advertisement.

## **19. Powers of entry and cost recovery**

- (1) An authorised person acting on the local government's instructions may enter land to carry out work under this Part:
  - (a) under section 1066 of the Act, if the advertiser is the owner or occupier of the relevant land; or
  - (b) under section 1070 of the Act, if the advertiser is not the owner or occupier of the relevant land<sup>3</sup>.
- (2) If the advertiser is the owner of the relevant land, the amount properly and reasonably incurred by the local government in having work carried out under this Part is recoverable (together with interest) under sections 1066, 1067 and 1068 of the Act.
- (3) If the advertiser is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the advertiser together with interest on the same basis as applies to an owner of land under section 1067 of the Act<sup>4</sup>.

## **PART 6 - MISCELLANEOUS**

### **20. Local government advertisements**

The local government may itself exhibit advertisements without approval under this local law.

### **21. Interference with local government advertisements**

A person must not remove, alter, deface or otherwise interfere with an advertisement exhibited by the local government.

Maximum penalty - 50 penalty units.

### **22. General defence to charge of unlawful exhibition of advertisement**

If a person is charged with exhibiting an advertisement in contravention of this local law, it is a defence for the defendant to prove that the advertisement was exhibited without the defendant's knowledge or consent.

## **PART 7 - LOCAL LAW POLICIES**

### **23. 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.

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<sup>3</sup> A magistrate may make an order for entry to the land under section 1063 (Order on occupier who refuses entry) if the occupier refuses to permit entry.

<sup>4</sup> Section 1067(2) of the Act provides for the payment of interest on the same basis as for an overdue rate.

<sup>5</sup> Section 1067(2) of the Act provides for the payment of interest on the same basis as for an overdue rate.