



LOCAL LAW No. 4 of 2010

ANIMALS

ADOPTED BY COUNCIL: 23/11/2010
LAST AMENDED: 23/11/2010

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NOTE This Local Law has been prepared so as to be consistent with the provisions of the Victorian Human Rights Charter and the rights and obligations provided for thereunder.

PART ONE - PRELIMINARY PROVISIONS

1. Title

This is the *Local Law No. 4 of 2010 Animals*.

2. Purpose

The purpose of this Local Law is to provide for the peace order and good governance of the Mount Alexander Shire by:

- (1) managing activities and uses which may be dangerous, cause a nuisance or be detrimental to the amenity of the area or the environment;
- (2) regulating and controlling activities to maintain a healthy and safe environment in the municipal district for residents and visitors;
- (3) regulating the manner in which animals are kept and housed and the number of certain animals that may be kept on a property; and
- (4) providing for the administration of the Council's powers and functions.

3. Authorising provision

This Local Law is made under Section 111(1) of the *Local Government Act 1989*.

4. Commencement, revocation date and area of operation

This Local Law:

- (1) commences on 23rd November 2010; and
- (2) unless sooner revoked ceases operation on 24th November 2020; and
- (3) operates throughout the municipal district of Council.

5. Revocation of other Local Laws

From the date of operation of this Local Law, the following Local Law ceases to operate and is revoked:

- Local Law No. 3A Environment and Amenity.

6. Definitions of Words used in this Local Law

In this Local Law:

| | |
|-------------------------------|--|
| “Act” | Means the <i>Local Government Act 1989</i> . |
| “Animal” | Bees are not considered to be animals for the purposes of this Local Law |
| “appropriate fee” | Means the appropriate fee determined by the Council in accordance with this Local Law. |
| “authorised officer” | Means a person appointed pursuant to Section 224 of the Act as an authorised officer for the purposes of this Local Law. |
| “Council” | Means Mount Alexander Shire Council. |
| "declared road" | Means a road for which the Roads Corporation is the responsible road authority under the <i>Road Management Act 2004</i> . |
| "droving of livestock" | Means an individual driving livestock from a location outside the municipal district for the purposes which include the supplementing of feed or the taking of livestock to or from a market, or ending at a point beyond the municipal district. |
| “livestock” | includes horses, cattle, sheep and other animals kept or bred on a farm but does not include bees or any other insect. |
| “municipal district” | Means the municipal district of the Council. |
| “penalty unit” | Has the same meaning as in the <i>Sentencing Act 1991</i> . |
| "Procedures Manual" | means the Council's Procedures Manual as amended from time to time. |
| “public place” | Has the same meaning as in the <i>Summary Offences Act 1966</i> . |
| “road” | Includes: <ul style="list-style-type: none"> (a) a street; (b) a right of way; (c) any land reserved or proclaimed as a street or road under the <i>Crown Land (Reserves) Act 1978</i> or the <i>Land Act 1958</i>; (d) a passage; |

- (e) a cul de sac;
- (f) a by-pass;
- (g) a bridge or ford;
- (h) a footpath, bicycle path or nature strip; and
- (i) any culvert or kerbing or other land or works forming part of the road.

"transfer of livestock by foot" Means the movement by foot of livestock from one property to another on a road within the municipal district or to or from an adjacent municipal district.

PART TWO**7. Roadside grazing**

- (1) No person shall graze livestock on a road without a permit.
- (2) An applicant for a permit must provide the council with information about :
 - (1) measures to be applied for the adequate supervision and effective control of the livestock;
 - (2) measures that will be taken to adequately provide for the health and fitness of the livestock;
 - (3) whether any other necessary permits or consents have been obtained including where grazing is to occur on a declared road;
 - (4) details of the roads to be grazed or the route to be travelled;
 - (5) signs that will be used so as to comply with the *Road Safety Road Rules 2009*;
 - (6) measures that will be taken to remove any litter from the road;
 - (7) details of the applicants property identification code;
 - (8) if sheep, a sheep health statement.

PENALTY: 5 PENALTY UNITS

8. Droving of livestock

- (1) No person shall engage in driving livestock on a road without a permit.
- (2) A person engaged in driving livestock on a road must comply with the requirements set out in the Council's *Procedures Manual*.

PENALTY: 5 PENALTY UNITS

9. Transfer of livestock by foot

Any person transferring livestock by foot on any local road must ensure:

- (1) the livestock are supervised and under effective control at all times by a person who is competent in the management of such livestock;
- (2) that all livestock reach their destination by the most direct route, provided the route does not traverse any township within the municipal district, or as directed by an Authorised officer;

- (3) compliance with any directions from Council or its Authorised officer with regard to the protection of the road, the road reserve, roadside vegetation, any infrastructure on the road, roadside drainage or private property from damage caused by livestock;
- (4) not more than 6,000 sheep, ewes, wethers or rams or 500 cattle are transferred at any one time;
- (5) the livestock only travel on the road during daylight hours;
- (6) livestock are only on the road for the time it takes for the movement to their destination, travelling not less than 2 kilometres per hour;
- (7) that there is no traffic delay that exceeds more than 5 minutes in any one crossing; and
- (8) the provision, display and function of all signs, poles, and other warning devices comply with any regulations.

PENALTY: 5 PENALTY UNITS

10. Horseriding

- (1) A person must not ride a horse on a road or Council land, including a road reserve or footpath, if the activity causes damage to the road or Council land.
- (2) A person must not ride a horse on Council land, including a road reserve or footpath, if the activity causes a nuisance to any person.
- (3) A person must not ride a horse on Council land where the Council has erected signs on that land prohibiting horseriding.

PENALTY: 5 PENALTY UNITS

11. Keeping of animals

- (a) An owner or occupier of property must not keep or allow to be kept any more in number of each kind of animal than set out in the following table without a permit:

| Type of animal | Area of property | | | |
|--|------------------|---------------------|--------------------|--------------------|
| | Under 0.5 ha | Between 0.5 and 2ha | Between 2 and 8 ha | 8 ha and larger |
| Dogs | 2 | 2 | 3 | 5 |
| Cats | 2 | 2 | 3 | 5 |
| Pigeons | 10 | 15 | 20 | 40 |
| Poultry | 10 | 15 | 20 | 40 |
| Roosters | permit required | permit required | 1 | 5 |
| Horses | permit required | 2 | 5 | no permit required |
| other agricultural or similar large animals, including, but not limited to cattle, sheep, pigs and goats. | permit required | 2 | 5 | no permit required |

Note: - the above numbers do not include working dogs

PENALTY: FIVE PENALTY UNITS AND ONE PENALTY UNIT FOR EACH DAY THE BREACH CONTINUES AFTER A FINDING OF GUILT BY ANY COURT.

- (b) Clause 11 (a) does not apply where a planning permit has been obtained for land used for the purposes of animal keeping, animal boarding or animal breeding.

- (c) Clause 11 (a) does not apply where existing use rights have been established (pursuant to the Mount Alexander Planning Scheme) for any animal keeping, animal boarding or animal breeding.
- (d) For the purpose of calculating the number of animals kept, the progeny of any animal which is lawfully kept will be exempt for 12 weeks after their birth.
- (e) An application for a permit pursuant to Clause 11 (a) must be made in writing and shall not be considered unless it contains the following:
 - (i) the species of the animal(s), the quantity desired to be kept and identifying features of the animal(s);
 - (ii) the name, address, and telephone number of the applicant;
 - (iii) the address at which the animal is desired to be kept;
 - (iv) the reason that the animal is desired to be kept;
 - (v) the type of enclosure, shelter and run proposed for the wellbeing of the animal;
 - (vi) the total area available for each and all animals;
 - (vii) measures proposed to be taken to ensure no nuisance by means of noise, dust or odour is caused to other people. In the case of dogs and poultry, measures to prevent noise nuisance are to be specifically nominated.
- (f) All animals must be kept in accordance with the Councils *Procedures Manual*.
- (g) To determine whether to grant a permit pursuant to Clause 11(a) an Authorised officer must take into consideration:
 - (i) the zoning of the land;
 - (ii) the proximity of adjoining properties;
 - (iii) the cleanliness of the residence and its surrounds;
 - (iv) the type and additional numbers of animals to be kept;
 - (v) the security of the premises including the state of fencing and the adequacy of the animal shelters and runs;
 - (vi) the welfare of the animals;
 - (vii) the likely effects on adjoining properties;
 - (viii) the impact on the amenity of the area;
 - (ix) the conservation of the land and flora of the region;
 - (x) the past history of the applicant as an animal owner; and

- (xi) any other matter considered relevant by the Authorised officer.

12. Animal housing

- (1) A person must not keep any horse, cattle, sheep, goat or like animal in any yard or enclosed land which does not satisfy the requirements of sub-clause (2) and the Council's *Procedures Manual*.
- (2) Animals kept must be kept in an enclosure or area way which:
 - (a) is adequate and appropriate for the type and numbers of animals being housed;
 - (b) is maintained in a sanitary and inoffensive condition; and
 - (c) protects adjoining properties from unreasonable animal noise, dust or odour; and
 - (d) Prevents escape of the animal from the property to which they belong.
- (3) The additional requirements that will apply to animal housing are contained in the Council's *Procedures Manual*.

PENALTY: 5 PENALTY UNITS

13. Keeping of birds

- (1) A person must not keep any bird, including poultry, ducks, turkeys, geese, cockatoos, pigeons, galahs or peacocks in a way which does not comply with sub-clause (2) or satisfy the requirements in the Council's *Procedures Manual*.
- (2) Birds must be kept in:
 - a) adequate and proper housing in accordance with clause 11 of this Local Law as if it applied to the keeping of birds; and
 - b) compliance with the animal housing requirements contained in the Council's *Procedures Manual* as if it applied to the keeping of birds.

PENALTY: 5 PENALTY UNITS

14. Animal litter

The owner or person in charge of an animal must immediately collect and remove all of the excrement left by the animal on a road or Council land or in a public place.

PENALTY: 5 PENALTY UNITS

15. Animal or bird noise

- (1) The owner or occupier of property must take all necessary steps to prevent any objectionable animal or bird noise from the property.

- (2) Noise will be considered to be objectionable where it:
- (e) occurs at unreasonable times or frequent occurrences; or
 - (f) adversely affects the comfort, convenience, quiet enjoyment or privacy of any other person living in the locality; or
 - (g) results in at least one written and reasonable complaint being received by the Council from people living on a different property and which is verified by another person.

PENALTY: 5 PENALTY UNITS

PART THREE - ADMINISTRATION

DIVISION 1 - PERMITS, FEES AND DELEGATIONS

16. Applying for a permit

- (1) A person who wishes to apply for a permit may do so by:
 - (a) lodging with the Council an application; and
 - (b) paying to the Council the appropriate application fee.
- (2) The Council may require an applicant to provide additional information before approving an application for a permit or for exemption.
- (3) The Council may require a person making an application for a permit to give public notice of the application which will entitle any person to make a submission and to be heard in accordance with section 223 of the Act.

17. Fees and charges

- (1) The Council may, from time to time, by resolution determine fees and charges payable pursuant to this local law.
- (2) In determining any fees and charges the Council may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.
- (3) The Council may waive, reduce or alter a fee or charge with or without conditions.

18. Issue of permits

The Council may:

- (a) issue a permit, with or without conditions; or
- (b) refuse to issue a permit.

19. Duration of permits

- (1) A permit is in force until the expiry date indicated on the permit, unless it is cancelled before the expiry date.
- (2) If no expiry date is indicated on the permit, the permit expires on 30 June next after the day on which it is issued.

20. Conditional permits

- (1) A conditional permit may be subject to conditions which the Council considers to be appropriate in the circumstances including:
 - (a) the payment of a fee or charge; and

- (b) a time limit to be applied either specifying the duration, commencement or completion date; and
 - (c) the happening of an event; and
 - (d) the rectification, remedying or restoration of a situation or circumstance; and
 - (e) where the applicant is not the owner of the subject property, the consent of the owner; and
 - (f) the granting of some other permit or authorisation.
- (2) The conditions of a permit must be set out in the permit.
- (3) The Council may, during the currency of a permit, alter the conditions of a permit if it considers it to be appropriate to do so, after providing the permit holder with an opportunity to make comment on the proposed alteration.
- (4) A person who undertakes an activity for which the Council has issued a permit must comply with the conditions of the permit.

PENALTY: 5 PENALTY UNITS

21. Cancellation of a permit

- (1) The Council may cancel a permit if it considers that:
- (a) there has been a serious or ongoing breach of the conditions of the permit; or
 - (b) a notice to comply has been issued, but not complied with within seven days after the time specified in the notice for compliance; or
 - (c) there was a significant error or misrepresentation in the application for the permit; or
 - (d) in the circumstances, the permit should be cancelled.
- (2) Before it cancels a permit, the Council must provide to the permit holder an opportunity to make comment on the proposed cancellation.
- (3) If a permit holder is not the owner of the land and the owner's consent was required to be given to the application for the permit, the owner must be notified of the cancellation of the permit.

22. Correction of permits

- (1) The Council may at any time correct a permit in relation to:
- (a) an unintentional error or an omission; or
 - (b) an evident material miscalculation or an evident material mistake of description of a person, thing or property.

- (2) The Council must notify a permit holder in writing of any correction.
- (3) If the permit holder is not the owner of the land and the owner's consent was required to be given to the application for the permit, the owner must be notified of any correction to the permit.

23. Registers

- (1) The Council must maintain a record of permits, including details of corrections and cancellations.
- (2) The Council must maintain a register of determinations made, and of guidelines prepared, for the purposes of this Local Law.
- (3) The Council must ensure that the registers are available for public inspection at the office of the Council during normal business hours.

24. Service authorities

- (1) A service authority or a person employed by or acting on behalf of a service authority is not required to obtain a permit in respect of work which is for the purposes of the service authority.
- (2) A person who would, but for this clause, be required to obtain a permit in respect of any activity must notify the Council of the activity prior to its commencement.

25. Exemptions

- (1) The Council may by written notice exempt any person or class of persons from the requirement to have a permit, either generally or at specified times.
- (2) An exemption may be granted subject to conditions.
- (3) A person must comply with the conditions of an exemption.

PENALTY: 5 PENALTY UNITS

- (4) An exemption may be cancelled or corrected as if it were a permit.

26. Offences

- (1) A person who makes a false representation or declaration (whether oral or in writing), or who intentionally omits relevant information in an application for a permit or exemption is guilty of an offence.

PENALTY: 5 PENALTY UNITS

- (2) Any person who fails to comply with a permit or any condition in a permit is guilty of an offence.
- (3) Any person who fails to comply with the reasonable directions of an authorised officer is guilty of an offence.

PENALTY: 5 PENALTY UNITS

27. Delegation

- (1) In accordance with section 114 of the Act, the Council hereby:
- (a) delegates to the Chief Executive Officer and to such Council officers nominated by the Chief Executive Office and to any person for the time being acting on behalf of such persons all the powers, discretions, authorities and considerations of Council under this Local Law including the power, discretion and authority to issue or refuse permits, fix conditions and durations relevant to such permits, cancel permits, require additional information, apply guidelines or policies of Council, to waive the need for any permit, to waive, fix or reduce fees or charges or to do any act, matter or thing necessary or incidental to the exercise of any function or power by the Council; and
 - (b) delegates to the Environmental Health Officer and the Local Laws Officer and to any person for the time being acting on behalf of those persons the power to issue or refuse permits and apply conditions, exercise discretions with respect to such permits and conditions and require additional information.

DIVISION 2 — ENFORCEMENT**28. Power of authorised officers to direct - notice to comply**

An authorised officer may, by a written notice given to a person who appears to be in breach of this local law, direct that person to remedy any situation which constitutes a breach under this local law.

29. Time to comply

- (1) A notice to comply must state the time and date by which the situation must be remedied.
- (2) The time required by a notice to comply must be reasonable in the circumstances having regard to:
 - (a) the amount of work involved; and
 - (b) the degree of difficulty involved; and
 - (c) the availability of necessary materials or other necessary items; and
 - (d) climatic conditions; and
 - (e) the degree of risk or potential risk involved; and
 - (f) any other relevant factor.
- (3) If a permit holder is not the owner of the land and the owner's consent was required to be given to the application for the permit, the owner must be notified of any notice to comply and of the reason why it has been served.

30. Failure to comply with a notice to comply

- (1) A person who fails to comply with a notice to comply served on that person is guilty of an offence.
- (2) Where a person has failed to comply with a notice to comply, the Council may carry out or cause to be carried out such works as are required to remedy the breach and may recover the costs of doing so from the person who is in breach of the local law in any Court or Tribunal having jurisdiction.

PENALTY: 5 PENALTY UNITS

31. Power of authorised officer to act in urgent circumstances

- (1) In urgent circumstances arising as a result of a failure to comply with this Local Law, an authorised officer may take action to remove, remedy or rectify a situation without first serving a notice to comply if:

- (a) the authorised officer considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a notice, may place a person, animal, property or thing at risk or in danger; and
 - (b) wherever practicable, a senior officer of the Council is given prior notice of the proposed action.
- (2) In deciding whether circumstances are urgent, an authorised officer must take into consideration, to the extent relevant:
- (a) whether it is practicable to contact:
 - (i) the person by whose default the situation has arisen; or
 - (ii) the owner or the occupier of the land or building affected; and
 - (b) whether there is an urgent risk or threat to public health; public safety, the environment or animal welfare.
- (3) The action taken by an authorised officer under sub-clause (1) must not extend beyond what is necessary to cause the immediate abatement of or minimize the risk or danger involved.
- (4) An authorised officer who takes action under sub-clause (1) must ensure that, as soon as practicable:
- (a) details of the circumstances and remedying action are forwarded to the owner or occupier of the land or the person in default; and
 - (b) a report of the action taken is submitted to the Chief Executive Officer.

32. Power of authorised officer to impound

- (1) If an authorised officer has impounded anything in accordance with this Local Law, the Council may refuse to release it until the appropriate fee or charge for its release has been paid to the Council.
- (2) The Council may, by resolution, fix charges (generally or specifically) for the purposes of this clause.
- (3) As soon as possible after the impounding and where practicable to do so, the authorised officer must serve written notice on the owner or person responsible for the item which has been impounded setting out the fees and charges payable and time by which the item must be retrieved.
- (4) If after the time required in a notice of impounding an impounded item is not retrieved, an authorised officer may take action to dispose of the impounded item as follows:
 - (a) where the item has no saleable value, it may be disposed of in the most economical way; and

- (b) where the item has some saleable value the item may be disposed of either by tender, public auction or private sale but failing sale may be disposed of in accordance with paragraph (a).
- (5) When the identity or whereabouts of the owner or person responsible for the impounded item is unknown, the authorised officer must take reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with sub-clause (4) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded item.
- (6) Any proceeds from the disposal of impounded items under this Local Law must be paid to the owner or to the person who, in the opinion of the Council, appears to be authorised to receive the money except for the reasonable costs incurred by the Council in the administration of this Local Law.
- (7) If a person described in sub-clause (6) cannot be identified or located within six months after the date of the notice of impounding, any proceeds of the sale cease to be payable to that person, and may be retained by the Council for municipal purposes.

33. Infringement notices

- (1) An authorised officer may issue an infringement notice in accordance with the Infringements Act 2006.
- (2) The fixed penalty in respect of an infringement is the amount set out in Schedule 7
- (3) The Chief Executive Officer or his delegate may by written notice withdraw an infringement notice within 28 days of the service of the same and then initiate a prosecution regardless of whether the penalty has been paid. If the penalty indicated in the infringement notice has been paid, the payment shall be refunded to the alleged offender prior to the prosecution being initiated.
- (4) The Chief Executive Officer or his delegate may withdraw an infringement notice and not proceed to prosecute, providing the circumstances warrant such action in the opinion of the Chief Executive Officer or his delegate.

34. Payment of penalty

- (1) A person issued with an infringement notice may pay the penalty specified to the Chief Executive Officer, Mount Alexander Shire Council, PO Box 185 Castlemaine, 3450 or at the Shire Offices, 25 Lyttleton Street, Castlemaine.
- (2) To avoid prosecution, the penalty specified must be paid within 28 days after the day on which the infringement notice is issued.
- (3) A person issued with an infringement notice is entitled to disregard the notice and defend the prosecution in court.

Schedule 7

**MOUNT ALEXANDER SHIRE COUNCIL
ROADS AND COUNCIL LAND LOCAL LAW NO. 4**

PENALTIES FIXED FOR INFRINGEMENTS

| Provision | Offence | Penalty Units |
|------------------|--|----------------------|
| 9 | Transfer of livestock by foot contrary to Local Law 4 | 2 |
| 10 | Horseriding contrary to Local Law 4 | 2 |
| 12 | Animal housing contrary to Local Law 4 | 2 |
| 13(1) | Keeping of birds contrary to Local Law 4 | 2 |
| 14 | Failure to remove animal litter | 2 |
| 15(1) | Objectionable noise from animals and birds | 2 |
| 26(1) | Making false representation or omission of relevant information in application for a permit or exemption | 2 |
| 26(2) | Failing to comply with a permit or condition of a permit | 2 |
| 26(3) | Failing to comply with directions | 2 |
| 30(1) | Failing to comply with a notice to comply | 2 |
| Various | Failing to obtain a permit | 2 |