



LOCAL LAW No. 3 of 2010

ENVIRONMENT

ADOPTED BY COUNCIL: 23/11/2010
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TABLE OF CONTENTS

PART ONE - PRELIMINARY PROVISIONS	4
1. Title	4
2. Purpose.....	4
3. Authorising provision	4
4. Commencement, revocation date and area of operation	4
5. Revocation of other Local Laws	4
6. Definitions of Words used in this Local Law	5
PART TWO	6
7. Camping on Council land, public land and private land	6
8. Temporary dwellings	6
9. Incinerators and open air burning	6
10. Domestic waste and recyclable materials	7
11. Commercial and Industrial Trade Waste	7
12. Dangerous or unsightly land	7
13. Use of scarguns	8
PART THREE - ADMINISTRATION.....	9
DIVISION 1 - PERMITS, FEES AND DELEGATIONS	9
14. Applying for a permit	9
15. Fees and charges	9
16. Issue of permits.....	9
17. Duration of permits.....	9
18. Conditional permits	9
19. Cancellation of a permit	10
20. Correction of permits.....	10
21. Registers	11
22. Service authorities.....	11
23. Exemptions	11
24. Offences.....	11
25. Delegation.....	12
DIVISION 2 - ENFORCEMENT	
26. Power of Authorised officers to direct - notice to comply	13
27. Time to comply.....	13
28. Failure to comply with a notice to comply.....	13

29. Power of Authorised officer to act in urgent circumstances..... 13
30. Power of Authorised officer to impound 14
31. Infringement notices..... 15
32. Payment of penalty 15
Schedule 6.....16

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. 3 of 2010 Environment*

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 damage or 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) identifying requirements or conditions that must be observed to ensure that a safe, healthy and enjoyable environment for residents and visitors is maintained; 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 Local Law.

6. Definitions of Words used in this Local Law

In this Local Law:

“Act”	Means the <i>Local Government Act 1989</i> .
“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.
"camp"	Means the erection and occupation of a tent, shed or any other structure and includes a caravan.
“camping area”	Means land which has been designated as such by Council resolution or land which has been registered with Council as a caravan park pursuant to the <i>Residential Tenancies Act 1997</i> .
“Council”	Means Mount Alexander Shire Council.
“Council land”	Means a land vested in or under the control of the Council, including roads, streets, reserves, reservations and the like.
“incinerator”	Means a structure or device that is used or is adapted or designed for the purpose of burning any material or substance but does not include a barbeque.
“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> .
"residential land"	Means any land which is zoned residential pursuant to the Mount Alexander Planning Scheme.
"scaregun"	Means a gas gun or similar gun or noise emitting device designed to scare birds from attacking crops, but does not include a firearm.
"temporary dwelling"	means a caravan, tent, shed or other structure of whatsoever nature.

PART TWO

7. Camping on Council land, public land and private land

- (1) No person shall camp on Council land, in a public place or on private land without a permit unless the land or place is designated as a camping area.
- (2) The requirement to obtain a permit to camp, whether in a tent, or a caravan on private land, does not apply where a tent or caravan is:
 - (a) placed on private land to be used by the owner; or
 - (b) where the owner gives his or her consent

provided the period of the use does not exceed 6 weeks in any twelve month period.

PENALTY: 5 PENALTY UNITS

- (3) The Council may grant an exemption from the requirements to obtain a permit to camp on Council land, in a public place or on private land if the applicant demonstrates to the satisfaction of the Council that special circumstances exist for doing so.

8. Temporary dwellings

- (1) Subject to sub-clause (2) a person must not place, establish, erect or occupy any temporary dwelling without a permit.
- (2) Nothing in sub-clause (1) prevents a person who has obtained a building permit from placing, establishing, erecting or occupying a temporary dwelling in association with the construction of a permanent detached dwelling.
- (3) A person to whom a permit has been issued must not, after the issue of a Certificate of Occupancy for the permanent dwelling or the expiration of a permit for the temporary dwelling (whichever first occurs) occupy the temporary dwelling and if the temporary dwelling is other than a caravan, must remove it from the property.
- (4) A person to whom a permit has been issued, must ensure that all conditions under Council's *Procedures Manual* are complied with.

PENALTY : 5 PENALTY UNITS

9. Incinerators and open air burning

- (1) Subject to sub-clause (2), no person shall light an incinerator or fire in the open air without a permit.
- (2) The requirement to obtain a permit to light an incinerator or fire in the open air does not apply to:

- (a) allotments exceeding 0.2 ha in area;
- (b) barbeques or campfires that comply with the *Country Fire Authority Act 1958*;
- (c) fires in the open air for which a permit has been issued under the *Country Fire Authority Act 1958*; or
- (d) the lighting of an incinerator on any Tuesday and Saturday in compliance with the *Country Fire Authority Act 1958*.

PENALTY: 5 PENALTY UNITS

10. Domestic waste and recyclable materials

Where the Council provides a domestic garbage collection service all waste and recyclable material left for collection must be placed in containers and placed ready for collection in a way that complies with the requirements in the Council's *Procedures Manual*.

PENALTY: 5 PENALTY UNITS

11. Commercial and Industrial trade waste

- (1) No person shall place a commercial or industrial waste or recycling receptacle on a road or Council land without a permit.
- (2) An owner or occupier who arranges for the collection of commercial or industrial trade waste or for waste hopper or recycling receptacle services must comply with the requirements in the Council's *Procedures Manual*.

PENALTY: 5 PENALTY UNITS

12. Dangerous or unsightly land

- (1) An owner or occupier of land must not allow or permit land which is in the opinion of an Authorised officer:
 - (e) kept in a manner which is dangerous or likely to cause danger to life or property;
 - (f) unsightly or detrimental to the general amenity of the neighbourhood because it harbours unconstrained rubbish or vegetation or contains waste material, unused vehicles, noxious weeds or any other waste material.
- (2) An owner or occupier of property in a residential area must ensure that the nature strip immediately adjoining his or her property is kept and maintained in good condition and order so as not to be unsightly or detrimental to the general amenity of the neighbourhood.
- (3) Where any material or thing on land results in the land being unsightly or detrimental to the general amenity of the neighbourhood the Council may serve a notice to comply on the owner or occupier of the land.

PENALTY: 5 PENALTY UNITS AND 1 PENALTY UNIT FOR EACH DAY THE BREACH CONTINUES AFTER A FINDING OF GUILT BY ANY COURT.

13. Use of scareguns

- (1) A person must not use or allow or authorise others to use a scaregun unless the requirements set out in the Council's *Procedures Manual* are complied with.

PENALTY: 5 PENALTY UNITS

PART THREE - ADMINISTRATION**DIVISION 1 - PERMITS, FEES AND DELEGATIONS****14. 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.

15. 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.

16. Issue of permits

The Council may:

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

17. 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.

18. 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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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

25. 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 Officer 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**26. 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.

27. 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.

28. 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

29. 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.

30. 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.

31. 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 6
- (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.

32. 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 6**MOUNT ALEXANDER SHIRE COUNCIL
ROADS AND COUNCIL LAND LOCAL LAW NO. 3****PENALTIES FIXED FOR INFRINGEMENTS**

Provision	Offence	Penalty Units
10	Failing to comply with requirements relating to waste collection	2
12 (1)	Allow or permit land to be kept in a dangerous or unsightly manner	2
12 (2)	Failing to ensure a naturestrip is maintained in good condition	2
13 (1)	Use of scareguns in contravention of requirements under councils Procedure manual	2
24 (1)	Making false representation or omission of relevant information in application for a permit or exemption	2
24 (2)	Failing to comply with a permit or conditions of a permit	2
24 (3)	Failing to comply with directions	2
28 (1)	Failing to comply with a notice to comply	2
Various	Failing to obtain a permit	2