



LOCAL LAW No. 5 of 2010

TRADING

**ADOPTED BY COUNCIL: 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 thereunder.

PART ONE - PRELIMINARY PROVISIONS

1. Title

This is the *Local Law No. 5 of 2010 Trading*.

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 the uses and activities on roads and Council land so that the Council is aware of uses or activities which may:
 - (a) interfere with the safety and convenience of people travelling on or using roads or land;
 - (b) impede free and safe access for people, in particular those with sight and movement impairment or disabilities;
 - (c) create a danger or expose others to risk; or
 - (d) be detrimental to the amenity of the area or the enjoyment of facilities on roads or land;
- (2) identifying activities and uses on roads and Council land where a permit is not required but conditions are applicable to the use so that the purposes identified in sub-clause (1) are achieved;
- (3) identifying activities and uses that are not permitted on roads and Council land;
- (4) regulating and controlling activities on roads and Council land in a way that is consistent with community expectations and demands about their desired lifestyle and the availability of goods and services provided to them; and
- (5) 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 and area of operation

This Local Law:

- (a) commences on 23rd November 2010; and
- (b) unless sooner revoked ceases operation on 24th November 2020; and
- (c) operates throughout the whole municipal district.

5. Revocation of other Local Laws

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

- Local Law No. 2A Roads and Council Land

6. Definitions of words used in this Local Law

In this Local Law:

“Act”	Means the <i>Local Government Act 1989</i> .
“advertising sign”	Means any board, notice, structure, banner or other similar device used for the purposes of soliciting sales or notifying people of the presence or location of a property where goods or services may be obtained and that does not require a permit under the Mount Alexander Planning Scheme.
“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.
“Council land”	Means land which is owned or occupied by or vested in the Council or in respect of which the Council has the care and management to which the public has access (whether an entry fee is paid or not) and includes a public place.
“Declared road”	Means a road for which the Roads Corporation is the responsible road authority under the <i>Road Management Act 2004</i> .
“itinerant trading”	Means selling or offering for sale goods or services from a temporary location (including on a road or a property adjacent to a road) or from place to place or from a vehicle and excludes garage sales.

“local street”	Means a road for which the Council is the responsible road authority under the <i>Road Management Act 2004</i> .
“municipal district”	Means the municipal district of the Council.
"outdoor eating"	Means the locating or placing of tables or chairs or both tables and chairs on a footpath or part of a road for the purpose of serving food or drinks.
“penalty unit”	Has the same meaning as in the <i>Sentencing Act 1991</i>
“permit”	In relation to an activity, means a permit issued under this Local Law which authorises that activity.
“person”	Includes a corporation.
"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.
“vehicle”	Has the same meaning as in the <i>Road Safety Act 1986</i> and is a conveyance that is designed to be propelled or drawn by any means, whether or not capable of being so propelled or drawn, and includes a bicycle or other pedal powered vehicle, trailer, tram-car and air cushion vehicle but does not include railway locomotive or railway rolling stock.

PART TWO**7. A-Frame advertising signs**

- (1) No person shall place an A-Frame advertising sign on a road or in any area designated by the Council without a permit.
- (2) Where a permit has been obtained, the requirements of the Council's *Procedures Manual* must be complied with.

PENALTY: 5 PENALTY UNITS

8. Display of goods

- (1) No person shall display goods on a road without a permit.
- (2) Where a person has obtained a permit, the requirements of the Council's *Procedures Manual* must be complied with.

PENALTY: 5 PENALTY UNITS

9. Outdoor eating

- (1) No person shall place tables, chairs or other equipment used for or in connection with outdoor eating on a road without a permit.
- (2) Where a person has obtained a permit, the requirements of the Council's *Procedures Manual* must be complied with.

PENALTY: 5 PENALTY UNITS

10. Itinerant trading and vehicle sales

- (1) Subject to sub-clauses (2), (3) and (4) no person shall engage in itinerant trading without a permit.
- (2) The requirement to obtain a permit to sell or offer goods or services for sale from house to house does not apply to :
 - a) newspapers or magazines being home delivered;
 - b) the home delivery of goods purchased at another location;
 - c) the home delivery of goods where such delivery has been requested by the occupier of the house; or
 - d) the sale of products for fundraising purposes by persons duly represented by an educational, cultural, charitable or recreational organisation which is established within the municipal district.

- (3) No person shall leave a vehicle on a road or Council land for the purpose of offering such vehicle for sale or with a "For Sale" sign displayed on such vehicle.
- (4)
 - (a) The requirement to obtain a permit shall not apply to those traders or stallholders which are nominated by an approved organiser of an event which has been permitted by the Council or to a market that has the Council's permission.
 - (b) An authorised officer shall have the power to require any trader or stallholder referred to in sub-clause (a) to move to another location and it is an offence for such trader or stallholder to refuse or fail to do so.

PENALTY: 5 PENALTY UNITS

11. Trading sites

- (1) Where the Council has designated trading areas and has entered into an agreement with a person to trade from a designated site, no other person offering similar goods or services may trade from that site.
- (2) Trading from a designated trading site must comply with any other Local Law relevant to such trading.

PENALTY: 5 PENALTY UNITS

PART THREE - ADMINISTRATION**DIVISION 1 - PERMITS, FEES AND DELEGATIONS****12. 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.

13. 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.

14. Issue of permits

The Council may:

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

15. 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.

16. 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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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

23. 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**24. 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.

25. 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.

26. 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

27. 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.

28. 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.

29. 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 8
- (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.

30. 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 8

**MOUNT ALEXANDER SHIRE COUNCIL
ROADS AND COUNCIL LAND LOCAL LAW NO. 5**

PENALTIES FIXED FOR INFRINGEMENTS

Provision	Offence	Penalty Units
10(3)	Vehicle left on road or council land for the purpose of offering such vehicle for sale	2
22(1)	Making false representation or omission of relevant information in application for a permit or exemption	2
22(2)	Failing to comply with a permit or condition of a permit	2
22(3)	Failing to comply with directions	2
26(1)	Failing to comply with a notice to comply	2
Various	Failing to obtain a permit	2