

City of Wanneroo

DOGS LOCAL LAW 2016

Dog Act 1976
Dog Regulations 2013
Local Government Act 1995

City of Wanneroo
Dogs Local Law 2016

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Note

Most issues regulating dogs are dealt with by the Dog Act 1976 and Dog Regulations 2013. This includes:

- Registration of dogs;
- 'Dangerous dogs' as defined by the Act;
- Operation of dog management facilities (pounds), including:
 - Issues in relation to the impounding of dogs;
 - Attendance of a pound keeper at the pound;, and
 - Release of impounded dogs are dealt with by the Dog Act 1976, and in particular section 29.
- Registration fees (although fees for the seizure and impounding of a dog may be set by a local government in its annual budget under section 6.16 of the Local Government Act 1995);
- How off leash dog exercise areas are established;
- Dogs wandering at large;
- Dogs not under control;
- Dog attacks;
- Provisions about assistance animals such as guide dogs;
- Modified penalties applicable for minor offences.

The only matters that a local government may make local laws about are listed in section 51 of the Dog Act:

51. Local law making powers

A local government may so make local laws —

- (a) *providing for the registration of dogs;*
- [(b) deleted]
- (c) *specifying areas within which it shall be an offence (unless the excreta are removed) for any person liable for the control of a dog to permit that dog to excrete on any street or public place or on any land without the consent of the occupier;*
- (d) *requiring that in specified areas a portion of the premises where a dog is kept must be fenced in a manner capable of confining the dog;*
- (e) *providing for the establishment and maintenance of dog management facilities and other services and facilities necessary or expedient for the purposes of this Act;*
- (f) *providing for the detention, maintenance, care and release or disposal of dogs seized;*
- (g) *as to the destruction of dogs pursuant to the powers hereinbefore conferred;*
- [(h) deleted]
- (i) *providing for the licensing, regulating, construction, use, and inspection of approved kennel establishments.*

**Dog Act 1976
Dog Regulations 2013
Local Government Act 1995**

**City of Wanneroo
Dogs Local Law 2016**

Under the powers conferred by the *Dog Act 1976* and under all other powers enabling it, the Council of the City of Wanneroo resolved on the **dd mm** 2016 to make the following local law.

PART 1 - PRELIMINARY

1.1 Title

This is the *City of Wanneroo Dogs Local Law 2016*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Repeal

The following parts of the *City of Wanneroo Animals Local Law 1999*, published in the *Government Gazette* on 27 August 1999, are repealed –

- (a) Parts 2 and 3;
- (b) in the First Schedule –
 - (i) the heading 'Part 2 Dogs' and items 1-6 (inclusive) under that heading; and
 - (ii) the heading 'Part 3 Approved Dog Kennel Establishments' and items 7-11 (inclusive) under that heading; and
- (c) the Second, Third and Fourth Schedules.

1.4 Terms used

- (1) In this local law unless the context otherwise requires –

Act means the *Dog Act 1976*;

authorised person means a person appointed by the local government to perform all or any of the functions conferred on an authorised person under this local law;

CEO means the Chief Executive Officer of the local government;

district means the district of the local government;

district means an area of the State that has been declared to be a district under the Local Government Act 1995, and includes for certain purposes provided for in this Act other areas which although not being within the boundaries of a district are regarded for those purposes as being part of the district;
s3(1) Dog Act 1976

effectively confined —

- (a) in relation to keeping a dog in premises comprising a mobile home, means the mobile home is designed and constructed in a way that enables an occupant to prevent the dog from escaping the mobile home; and
- (b) in relation to keeping a dog in or at other premises, or in any outdoor area of those premises, means the premises or area is bounded by a fence or barrier of a standard sufficient to prevent the dog from escaping;

s3(1) Dog Act 1976

local government means the City of Wanneroo;

local planning scheme means a local planning scheme made by the local government under the *Planning and Development Act 2005*;

owner in relation to a dog means —

- (a) the person by whom the dog is ordinarily kept; or
- (b) a person who is deemed by subsection (2) to be the owner of the dog;

Section 3(2) states —

‘(2) A person who is shown in the register maintained by a local government under this Act as being the last person recorded by the local government as the registered owner of a dog is deemed to be owner of that dog, whether or not the registration in his name continues in force, unless he proves that he is not the owner of the dog’.

owner’s delegate, in relation to a registered owner, means a person appointed under section 16AA as the dog owner’s delegate;

person liable for the control of the dog means each of the following —

- (a) the registered owner of the dog; or
- (b) the owner of the dog; or
- (c) the occupier of any premises where the dog is ordinarily kept or ordinarily permitted to live; or
- (d) a person who has the dog in his possession or under his control, but does not include —
- (e) a registered veterinary surgeon, or a person acting on his behalf, in the course of his professional practice; or
- (f) a police officer or other person acting under a statutory duty or in the administration of this Act;

s3(1) and (2) Dog Act 1976

“premises” shall, for the purpose of determining who is the occupier, be taken to refer to any land or building, or part of any land or building, that is or is intended to be occupied as a separate residence from any adjacent tenement, and includes a mobile home;

s3(1) Dog Act 1976

“Regulations” means the *Dog Regulations 2013*; and

“thoroughfare” has the meaning given to it in section 1.4 of the *Local Government Act 1995*.

“townsite” means —

land constituted, defined, or reserved as the site of a town or village under the *Land Administration Act 1997*; and land subdivided or laid out as the site for a townsite, township, or village, in accordance with the subdivisional plan, lodged with the Western Australian Information Authority established by the *Land Information Authority Act 2006* section 5 or with the department principally assisting in the administration of the *Land Administration Act 1997*; and

[deleted]

land within a town or city under the *Local Government Act 1995* that is outside the metropolitan region;
s3(1) *Dog Act 1976*

- (2) A term that is used in this local law and is not defined in subclause (1) has the same meaning that is given to it in the Act or, if not defined in the Act, the same meaning given to it in the *Local Government Act 1995*.

1.5 Application

This local law applies throughout the district.

PART 2 - KEEPING OF DOGS

2.1 Dogs to be confined

- (1) An occupier of premises on which a dog is kept must -
- (a) ensure that a portion of the premises on which the dog is kept is fenced in a manner capable of confining the dog;
 - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
 - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with a proper latch or other means of fastening it;
 - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
 - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) An occupier who fails to comply with subclause (1) commits an offence.

2.2 Limitation on the number of dogs

- (1) This clause does not apply to premises which have been -
- (a) licensed under Part 4 as an approved kennel establishment; or
 - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act -
- (a) if the premises are situated on a lot having an area of 4 hectares or more - 6 dogs over the age of 3 months and the young of those dogs under that age; or
 - (b) if the premises are situated on any other lot - 2 dogs over the age of 3 months and the young of those dogs under that age.

2.3 Offence to excrete

- (1) A dog must not excrete on –

- (a) any thoroughfare or other public place; or
 - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

PART 3 - APPROVED KENNEL ESTABLISHMENTS

3.1 Terms used

In this Part -

licence means a licence to keep an approved kennel establishment on premises;

licensee means the holder of a licence;

premises, in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence; and

transferee means a person who applies for the transfer of a licence to her or him under clause 3.14.

3.2 Application for a licence

An application for a licence must be made in the form of that in Schedule 1, and must be lodged with the local government together with -

- (a) a site plan of the premises showing the location of each of the kennels and yards and all other buildings, structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copies of the notices to be given under clause 3.3;
- (d) written evidence that either the applicant or another person who will have charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (e) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (f) the fee for the application for a licence referred to in clause 3.10(1).

3.3 Notice of proposed use

- (1) After lodging an application for a licence, the applicant for the licence must give notice of the proposed use of the premises as an approved kennel establishment –
- (a) once in a newspaper circulating in the district; and
 - (b) to the owner and occupier of premises, any part of which is within 275 metres of the nearest boundary of the land on which it is proposed to establish the kennel.

- (2) Each notice in subclause (1) must specify that -
- (a) any written submissions as to the proposed use are to be lodged with the CEO within 21 days of the date the notice is given; and
 - (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) If -

- (a) a notice given under subclause (1) does not clearly identify the premises; or
- (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

the local government may refuse to determine the application for a licence until the notice is given in accordance with its directions.

3.4 Exemption from notice requirements

If an application for a licence is made in respect of premises on which an approved kennel establishment is either a -

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a local planning scheme, then the requirements of clauses 3.2(c), 3.3 and 3.5(a) do not apply in respect of the application for a licence.

3.5 When application can be determined

An application for a licence is not to be determined by the local government until -

- (a) the applicant has complied with clause 3.2;
- (b) the applicant submits proof that the notices referred to in clause 3.3(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 3.3(2)(a) on the proposed use of the premises.

3.6 Determination of application

In determining an application for a licence, the local government is to have regard to -

- (a) the matters referred to in clause 3.7;
- (b) any written submissions received within the time specified in clause 3.3(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;

- (e) whether the approved kennel establishment is likely to create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

3.7 Where application cannot be approved

The local government cannot approve an application for a licence where -

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a local planning scheme;
- (b) an applicant for a licence or another person who will have charge of the dogs will not reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; or
- (c) if the applicant is not a fit and proper person to keep an approved kennel establishment.

3.8 Conditions of approval

- (1) The local government may approve an application for a licence subject to one or more of the conditions set out in clause 3.8(2) and to such other conditions as the local government considers appropriate.
- (2) The conditions to which a licence may be subject are -
 - (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
 - (b) each kennel and each yard must be at a distance of not less than -
 - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
 - (ii) 10m from any dwelling; and
 - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
 - (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
 - (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
 - (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
 - (f) the upper surface of the kennel floor must be –
 - (i) at least 100mm above the surface of the surrounding ground;
 - (ii) smooth so as to facilitate cleaning;
 - (iii) rigid;
 - (iv) durable;
 - (v) slip resistant;
 - (vi) resistant to corrosion;
 - (vii) non-toxic;
 - (viii) impervious;

- (ix) free from cracks, crevices and other defects; and
- (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in paragraph (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of -
 - (i) 2m; or
 - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence must, in accordance with the application for the licence, continue to reside -
 - (i) at the premises; or
 - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.
- (3) In respect of a particular application for a licence, the local government may vary any of the conditions contained in clause 3.8(2)

3.9 Compliance with conditions of approval

A licensee who does not comply with the conditions of a licence commits an offence.

3.10 Fees

- (1) On lodging an application for a licence, the applicant must pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee must pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee must pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 - 6.19 of the *Local Government Act 1995*.

3.11 Form of licence

The licence is to be in the form determined by the local government and is to be issued to the licensee.

3.12 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 3.10(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

A licence under this section has effect for a period of 12 months, and is renewable upon payment of the prescribed fee, but may be cancelled at any time by the local government if the local government is dissatisfied with the conduct of the establishment.

s27(5) Dog Act 1976

3.13 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence –
 - (a) on the request of the licensee;
 - (b) if the licensee breaches the Act, the Regulations or this local law; or
 - (c) if the licensee is not a fit and proper person to keep an approved kennel establishment.
- (3) The date a licence is cancelled is to be, in the case of –
 - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
 - (b) paragraph (b) or (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

Section 27(6) and (7) of the *Dog Act 1976* states -

- (6) The cancellation of a licence under this section shall be effected by the service of a notice on the licensee specifying a period at the end of which the licence is cancelled, which shall be a period of not less than 3 months.
- (7) Where —
 - (a) the local government refuses the grant of a licence under this section; or
 - (b) notice of the cancellation of a licence under this section is given, the applicant or the licensee as the case may be may apply to the State Administrative Tribunal for a review of the decision.

3.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be —
 - (a) made in the form determined by the local government;
 - (b) made by the transferee;
 - (c) made with the written consent of the licensee; and
 - (d) lodged with the local government together with —
 - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
 - (ii) the fee for the application for the transfer of a licence referred to in clause 3.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 3.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

3.15 Notification

The local government is to give written notice to -

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 3.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 3.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 3.13(2), which notice is to be given in accordance with section 27(6) of the Act.

3.16 Inspection of kennel

With the consent of the occupier, an authorised person may enter and inspect an approved kennel establishment at any time.

Section 12A(2) and (3) of the *Dog Act 1976* states –

- (2) With the authority of a warrant, an authorised person, and any other person named in the warrant, may enter and inspect any premises for any purpose relating to the enforcement of this Act.
- (3) If he is satisfied that there are reasonable grounds for doing so, a Justice of the Peace may issue a warrant for the purpose of subsection (2).

PART 4 - ENFORCEMENT

4.1 Terms used

In this Part -

infringement notice means the notice referred to in clause 4.3;

notice of withdrawal means the notice referred to in clause 4.6(1); and

penalty unit has the meaning given to it in clauses 4 and 5 of the *City of Wanneroo Penalty Units Local Law 2015*.

4.2 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not less than \$500 and not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

4.3 Modified penalties

- (1) An offence against a clause specified in Schedule 2 is an offence in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the third column of Schedule 2 directly opposite an offence is the modified penalty payable in respect of that offence if -
 - (a) the dog is not a dangerous dog; or
 - (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.
- (3) The amount appearing in the fourth column of Schedule 2 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

- (4) If this local law expresses a modified penalty as a number of penalty units, the monetary value of the modified penalty is the number of dollars obtained by multiplying the value of the penalty unit by the number of penalty units.

4.3 Issue of infringement notice

- (1) Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, the authorised person may serve on the alleged offender a notice in the form of Form 8 in Schedule 1 of the Regulations informing the alleged offender that, if he or she does not wish to be prosecuted in court for the alleged offence, he or she may pay to the local government within the time specified in the notice, the amount prescribed as the modified penalty.
- (2) An infringement notice may be served on an alleged offender personally, or by leaving it at or posting it to her or his address as ascertained from the alleged offender, at the time of or immediately following the occurrence giving rise to the allegation of the offence, or as recorded by the local government under the Act.

4.4 Failure to pay modified penalty

Where a person who receives an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, the person must be regarded as having declined to have the allegation dealt with by way of a modified penalty.

4.5 Payment of modified penalty

An alleged offender on whom an infringement notice has been served may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the modified penalty, with or without a reply as to the circumstances giving rise to the allegation, and then –

- (a) the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment; or
- (b) the local government, or an authorised person acting on behalf of the local government, may withdraw the infringement notice under clause 4.6 and refund the amount so paid.

4.6 Withdrawal of infringement notice

- (1) An infringement notice may, whether or not the modified penalty has been paid, be withdrawn by the local government, or an authorised person acting on behalf of the local government, by the sending of a notice in the form of Form 9 in Schedule 1 of the Regulations to the alleged offender at the address specified in the notice or his or her last known place of residence or business and in that event, any amount received by way of modified penalty must be refunded and any acknowledgment of the receipt of that amount must for the purposes of any proceedings in respect of the alleged offence be regarded as not having been issued.
- (2) A person appointed under section 29(1) of the Act to exercise the power of an authorised person to serve infringement notices under clause 4.3(1) is not eligible to be appointed under that section to exercise the power of an authorised person to withdraw infringement notices under clause 4.6(1).

SCHEDULE 1

(clause 3.2)

Dogs Local Law 2016

Application for a licence for an approved kennel establishment

I/we (full name)

of (postal address)

(telephone number)

(facsimile number)

(E-mail address)

Apply for a licence for an approved kennel establishment at (address of premises)

For (number and breed of dogs)

* (insert name of person) will be residing at the premises
on and from (insert date)

* (insert name of person) will be residing (sufficiently close to
the premises so as to control the dogs and so as to ensure their health and welfare) at
..... (insert address of residence)
on and from (insert date).

Attached are -

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside -
 - (i) at the premises; or
 - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as, in the keeping of dogs at the proposed kennel establishment.

Signature of applicant

Date

* delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months – section 27(5) of the *Dog Act* 1976.

OFFICE USE ONLY

Application fee paid on [insert date].

SCHEDULE 2

Offences in respect of which modified penalty applies (clause 4.2)

Offence	Nature of Offence	Modified Penalty Unit	Dangerous Dog Modified Penalty Unit
2.1	Failing to provide means for effectively confining a dog	10	20
2.3	Dog excreting in prohibited place	10	10
3.9	Failing to comply with a condition of a licence	10	20