

CERTIFICATE OF VALIDITY

UNDER SECTION 249(4) OF THE LOCAL GOVERNMENT ACT 1999

I, CAROLYN JANE HILLMAN VIGAR, of Wallmans Lawyers, Level 5, 400 King William Street, Adelaide in the state of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law:

By-law No 3 – Local Government Land

A by-law to regulate the access to and use of local government land (other than roads) and certain public places.

and do certify that in my opinion the Corporation of the City of Unley has power to make the by-law by virtue of the following statutory provisions:

Local Government Act 1934, sections 667(1).3.LIV, 667(1).4.I and 667(1).9.XVI;

Local Government Act 1999, sections 144, 188 (1)(a), 188(1)(f), 238(1), 240, 246(1), 246(3)(a), 246(3)(c), 246(3)(d), 246(3)(e), 246(3)(f) and 262;

and the by-law is not in conflict with the *Local Government Act 1999*.

DATED the 23rd day of July 2015


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Carolyn Jane Hillman Vigar, Legal Practitioner

CORPORATION OF THE CITY OF UNLEY

BY-LAW MADE UNDER THE LOCAL GOVERNMENT ACT 1999

By-Law No. 3 - Local Government Land

A by-law to regulate the access to and use of local government land (other than roads) and certain public places.

PART 1 – PRELIMINARY

1. Title

This by-law may be cited as the *Local Government Land By-law 2015*.

2. Objectives

The objectives of this by-law are to regulate the access to and use of local government land (other than roads) and certain public places for the:

- 2.1 prevention and mitigation of nuisances;
- 2.2 prevention of damage to local government land;
- 2.3 protection, convenience, comfort and safety of members of the public;

- 2.4 enhancement of the amenity of the Council area; and
- 2.5 good rule and government of the area.

3. Commencement

This by-law comes into operation on 1 January 2016.

4. Application

- 4.1 This by-law operates subject to the Council's *Permits and Penalties By-law 2015*.
- 4.2 This by-law applies throughout the Council area.
- 4.3 Clauses 8.1, 8.14, 8.16 and 8.27 of this by-law do not apply to electoral matter authorised by a candidate and which is:
 - 4.3.1 related to a Commonwealth or State election and occurs during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day;
 - 4.3.2 related to an election under the Act or the *Local Government (Elections) Act 1999* and occurs during the period commencing four weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or
 - 4.3.3 related to and occurs during the course of and for the purpose of a referendum.
- 4.4 This by-law does not apply to a police officer, emergency worker, Council officer or employee acting in the course and within the scope of that person's normal duties or to a contractor while performing work for the Council.

5. Interpretation

In this by-law, unless the contrary intention appears:

- 5.1 **Act** means the *Local Government Act 1999*;
- 5.2 **animal or animals** includes birds, aquatic creatures and insects but does not include a dog;
- 5.3 **building** includes any structure or fixture of any kind whether for human habitation or not;
- 5.4 **camp** includes setting up a camp or causing a tent, caravan or motor home to remain on the land for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the land;
- 5.5 **Council** means the Corporation of the City of Unley;
- 5.6 **electoral matter** has the same meaning as in the *Electoral Act 1985*, provided that such electoral matter is not capable of causing physical damage or injury to any person within its immediate vicinity;
- 5.7 **effective control** means a person exercising effective control of an animal either:

- 5.7.1 by means of a physical restraint; or
- 5.7.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 5.8 **emergency worker** is a person identified in regulation 54 of the *Road Traffic (Road Rules – Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 5.9 **human remains** has the same meaning as in the *Burial and Cremation Act 2013*;
- 5.10 **liquor** has the same meaning as in the *Liquor Licensing Act 1997*;
- 5.11 **offensive** includes threatening, abusive, insulting or annoying behaviour and offend has a complementary meaning;
- 5.12 **playing area** means a playground, field or space which is used by the public for social and organised sport or leisure;
- 5.13 **tobacco product** has the same meaning as in the *Tobacco Products Regulation Act 1997*;
- 5.14 **vehicle** has the same meaning as in the *Road Traffic Act 1961*; and
- 5.15 **waters** includes a body of water including a pond, lake, river, creek or wetlands under the care, control and management of the Council.

PART 2 – ACCESS TO AND CLOSURE OF LOCAL GOVERNMENT LAND

6. Access

- 6.1 The Council can:
 - 6.1.1 close, regulate or restrict access to any part of local government land to the public for specified times and days; and
 - 6.1.2 fix charges or fees payable for entry onto any part of local government land.
- 6.2 A person must comply with a sign installed by the Council indicating the conditions on which access to local government land is granted.

7. Closed lands

A person must not, without permission, enter or remain on any local government land:

- 7.1 which has been closed or at times when access by the public is restricted in accordance with clause 6.1;
- 7.2 where entry fees or charges are payable, without paying those fees or charges; or
- 7.3 where the land has been enclosed by fences or walls and gates that have been closed and locked.

PART 3 – USE OF LOCAL GOVERNMENT LAND

8. Activities requiring permission

A person must not do any of the following activities on local government land without Council permission:

8.1 Advertising

Display any sign other than a moveable sign which is displayed in accordance with the Council's *Moveable Signs By-Law 2015*.

8.2 Aircraft

Subject to the *Civil Aviation Act 1988*, land any aircraft on the land or take off from the land.

8.3 Alcohol

Consume, carry or be in possession or in charge of any liquor on local government land comprising parks or reserves to which the Council has determined this clause applies.

8.4 Amplification

Use an amplifier or other mechanical or electrical device for the purpose of broadcasting announcements or advertisements or magnifying sound.

8.5 Animals

8.5.1 Cause or allow an animal to stray onto, move over, graze or be left unattended.

8.5.2 Cause or allow an animal to enter, swim, bathe or remain in any waters.

8.5.3 Lead, herd or exercise an animal, except where the Council has set aside a track or other area for use by, or in connection with, an animal of that kind and provided that the animal or animals are under effective control.

8.6 Annoyance

Do anything likely to offend or unreasonably interfere with any other person:

8.6.1 using that land; or

8.6.2 occupying nearby premises,

by making a noise or creating a disturbance.

8.7 Aquatic creatures

Introduce any aquatic creature into any waters.

8.8 Attachments

Attach anything to a tree, plant, equipment, fence, post, structure or fixture.

8.9 Bees

Place a hive of bees on local government land or allow it to remain on the land.

8.10 Bridge jumping

Jump or dive from a bridge.

8.11 Buildings

Use a building or structure for a purpose other than its intended purpose.

8.12 Burials and memorials

8.12.1 Bury, inter or spread the ashes of any human remains or animal remains.

8.12.2 Erect any memorial.

8.13 Camping and tents

8.13.1 Erect a tent or other structure as a place of habitation.

8.13.2 Camp or sleep overnight.

8.14 Canvassing and preaching

Preach to, harangue, solicit, canvass or convey any advertising of a religious or other message to any bystander, passer-by or other person.

8.15 Defacing property

Deface, paint, spray, write, cut names, letters or make marks on any tree, rock, gate, fence, building, sign, bridge or property of the Council.

8.16 Distribution

Place on a vehicle (without the consent of the owner of the vehicle) or give out or distribute any hand bill, book, notice, leaflet or other printed matter to any bystander, passer-by or other person.

8.17 Entertainment and busking

8.17.1 Sing, busk or play a recording or use a musical instrument for the apparent purpose of either entertaining others or receiving money.

8.17.2 Conduct or hold a concert, festival, show, public gathering, circus, meeting, performance or any other similar activity.

8.18 Equipment

Use an item of equipment, facilities or property belonging to the Council if the person is of an age indicated by a sign or notice as being outside of the permitted age range for using such equipment, facility or property.

8.19 Fires

Subject to the *Fire and Emergency Services Act 2005*, light a fire except:

- 8.19.1 in a place provided by the Council for that purpose; or
- 8.19.2 in a portable barbeque, as long as the barbeque is used in an area that is clear of flammable material for a distance of at least 4 metres.

8.20 **Flora and fauna**

Subject to the *Native Vegetation Act 1991* and the *National Parks and Wildlife Act 1972*:

- 8.20.1 damage, pick, disturb, interfere with or remove any plant or flower;
- 8.20.2 cause or allow an animal to stand or walk on any flowerbed or garden plot;
- 8.20.3 deposit, dig, damage, disturb, interfere with or remove any soil, stone, wood, clay, gravel, pebbles, timber, bark or any part of the land;
- 8.20.4 take, interfere with, tease, harm or disturb any animal or the eggs of any animal;
- 8.20.5 pick, collect, take, interfere with or disturb any fruit, nuts, berries or native seeds;
- 8.20.6 disturb, interfere with or damage any burrow, nest or habitat of any animal;
- 8.20.7 use, possess or have control of any device for the purpose of killing or capturing any animal; or
- 8.20.8 burn any timber or dead wood.

8.21 **Games**

- 8.21.1 Participate in, promote or organise any organised competition or sport, as distinct from organised social play.
- 8.21.2 Play or practice any game which involves kicking, hitting or throwing a ball or other object on local government land which may cause or be likely to cause injury or discomfort to a person being on or in the vicinity of that land or detract from or be likely to detract from another person's lawful use and enjoyment of that land.
- 8.21.3 Play or practice the game of golf on local government land to which the Council has resolved this subclause applies.

8.22 **Litter, rubbish and refuse**

Subject to clause 9.13:

- 8.22.1 throw, cast, place, deposit or leave any rubbish, dirt or refuse of any kind whatsoever except in a garbage container provided for that purpose; or
- 8.22.2 deposit any soil, clay, stone, gravel, green waste or other putrescible waste or any other matter.

8.23 Model aircraft, boats and cars

Fly or operate a model aircraft, boat or model or remote control vehicle in a manner which may cause or be likely to cause injury or discomfort to a person being on or in the vicinity of the land or detract from or be likely to detract from another person's lawful use of and enjoyment of the land.

8.24 Obstruct waters

Place a buoy, cable, chain, hawser, rope or net in or across any waters.

8.25 Overhanging articles

Suspend or hang an article or object from a building, verandah, pergola, post or other structure on local government land where it might present a nuisance or danger to a person using the land or be of an unsightly nature.

8.26 Playing area

Use or occupy a playing area:

8.26.1 in such a manner as to damage or be likely to damage the surface of the playing area or infrastructure (above and under ground level);

8.26.2 in a manner contrary to the purpose for which the playing area was intended to be used or occupied; or

8.26.3 contrary to directions of the Council made by resolution and indicated on a sign displayed adjacent to the playing area.

8.27 Posting of bills

Post or allow or cause to be posted any bills, advertisements or other papers or items on a building or structure on local government land or in a public place.

8.28 Soliciting

Ask for or otherwise indicate a desire for a donation of money or any other thing.

8.29 Swimming

Subject to the provisions of the *Harbors and Navigation Act 1993* swim in, bathe or enter any waters except:

8.29.1 in an area which the Council has determined may be used for such purposes; and

8.29.2 in accordance with any conditions that the Council has determined by resolution apply to such use.

8.30 Trading

Sell, buy, offer or display anything for sale.

8.31 Vehicles

- 8.31.1 Drive or propel a vehicle except on an area or road constructed and set aside by the Council for that purpose.
- 8.31.2 Promote, organise or take part in a race, test or trial of any kind in which vehicles take part, except on an area properly constructed for that purpose.
- 8.31.3 Repair, wash, paint, panel beat or carry out other work to a vehicle, except for running repairs in the case of a breakdown.

8.32 Weddings, functions and special events

- 8.32.1 Hold, conduct or participate in a marriage ceremony, funeral or special event, except where the number of persons attending the event or entertainment does not exceed 50 people and does not involve the installation of infrastructure or vehicular access.
- 8.32.2 Erect a marquee, stage or structure for the purpose of holding or conducting a wedding, funeral or special event.
- 8.32.3 Hold or conduct any filming where the filming is for a commercial purpose.

9. Prohibited activities

A person must not do any of the following activities on local government land:

9.1 Animals

- 9.1.1 Cause or allow any animal to enter, swim, bathe or remain in any waters to the inconvenience, annoyance or danger of any other person bathing or swimming to which the Council has determined this subclause applies.
- 9.1.2 Cause or allow any animal to damage a flowerbed, garden plot, tree, lawn or like thing or place.
- 9.1.3 Lead, herd or exercise an animal in such manner as to cause a nuisance or endanger the safety of a person.

9.2 Equipment

Use any equipment, facility or property that belongs to the Council other than in the manner and for the purpose for which it was designed, constructed or intended to be used or in such manner as is likely to damage or destroy it.

9.3 Fishing

Fish in any waters to which the Council has determined this subclause applies.

9.4 Glass

Willfully break any glass, china or other brittle material.

9.5 Interference with land

Interfere with, alter or damage the land (including a building, structure or fixture located on the land) including:

- 9.5.1 altering the construction or arrangement of the land to permit or facilitate access from an adjacent property;
- 9.5.2 erecting or installing a structure in, on, across, under or over the land;
- 9.5.3 changing or interfering with the construction, arrangement or materials of the land;
- 9.5.4 planting a tree or other vegetation on the land, interfering with the vegetation on the land or removing vegetation from the land; or
- 9.5.5 otherwise using the land in a manner contrary to the purpose for which the land was designed to be used.

9.6 Interference with permitted use

Interrupt, disrupt or interfere with any other person's use of local government land which is permitted or for which permission has been granted.

9.7 Nuisance

Behave in such a manner as to cause discomfort, inconvenience, annoyance or offence to any other person.

9.8 Playing games

Play or practise a game:

- 9.8.1 which is likely to cause damage to the land or anything on it;
- 9.8.2 which endangers the safety or interferes with the comfort of any person; or
- 9.8.3 in any area where a sign indicates that the game is prohibited.

9.9 Smoking

Subject to the *Tobacco Products Regulation Act 1997* smoke, hold or otherwise have control over an ignited tobacco product or other substance on any land to which the Council has determined this subclause applies.

9.10 Solicitation

Tout or solicit customers for the parking of vehicles or for any other purpose whatsoever.

9.11 Throwing objects

Throw, roll, project or discharge a stone or any other object in a hazardous manner.

9.12 Toilets

In any public convenience:

- 9.12.1 urinate other than in a urinal or pan or defecate other than in a pan set apart for that purpose;
- 9.12.2 deposit anything in a pan, urinal or drain which is likely to cause a blockage;
- 9.12.3 use it for a purpose for which it was not designed or constructed;
- 9.12.4 enter a toilet that is set aside for use of the opposite sex except:
 - (a) where a child under the age of eight years is accompanied by an adult, parent or guardian of that sex;
 - (b) to provide assistance to a disabled person; or
 - (c) in the case of a genuine emergency.

9.13 Waste

Deposit or leave thereon:

- 9.13.1 anything obnoxious or offensive;
- 9.13.2 any offal, dead animal, dung or filth; or
- 9.13.3 industrial waste or bi-products.

PART 4 – ENFORCEMENT


10. Recovery of expenses

Where the Council incurs expenses by action taken under section 262(3) of the Act to carry out an order issued for the breach of a by-law under section 262(1) of the Act, the Council may recover those expenses as a debt from the person who failed to comply with the order by an action in a court of competent jurisdiction pursuant to section 144(1) of the Act.

11. Removal of animals and objects

An authorised person may remove an animal or object that is on local government land in breach of a by-law if no person is in possession or control of, or apparently in possession or control of, the animal or object.

This by-law was duly made and passed at a meeting of the Corporation of the City of Unley held on 27 July 2015 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.


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Peter Tsokas
Chief Executive Officer