

SECTION 249 LOCAL GOVERNMENT ACT 1999

CERTIFICATE OF VALIDITY

I, CIMON ANGELA BURKE care of Level 6, 19 Gilles 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:

City of Unley

By-law No 3 – Local Government Land By-Law 2022

A By-law to manage, control and regulate certain activities on roads in the Council's area;

and do certify that in my opinion:

City of Unley

has the power to make the By-law by virtue of the following statutory provisions:

Local Government Act 1999: sections 239, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e), 246(3)(f) and 246(3)(h)(iii); and
Local Government (General) Regulations 2013: regulation 28.

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

DATED the 6 day of June 2022



.....
Cimon Burke, Legal Practitioner

**CITY OF UNLEY****LOCAL GOVERNMENT LAND BY-LAW 2022****By-law No. 3 of 2022**

A By-law to manage and 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 2022* and is By-law No. 3 of the City of Unley.

2. Authorising Law

This By-law is made under sections 238 and 246 of the Act and section 18A of the *Harbors and Navigation Act 1993*.

3. Purpose

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:

- 3.1 to prevent and mitigate nuisances;
- 3.2 to prevent damage to Local Government land;
- 3.3 to protect the convenience, comfort and safety of members of the public;
- 3.4 to enhance the amenity of the Council's area; and
- 3.5 for the good rule and government of the Council's area.

4. Commencement, Revocation and Expiry

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation:¹

*By-law No. 3 – Local Government Land 2015.*²

- 4.2 This By-law will expire on 1 January 2030.³

Note-

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: (section 249(5) of the Act).
2. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.

3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

5. Application

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2022*.
- 5.2 Subject to subclauses 5.3 and 5.4, this By-law applies throughout the Council's area.
- 5.3 Subclauses 9.2, 9.20.3, 9.20.4, 9.23.2, 9.33, 10.6 and 10.11 of this By-law only apply in such part or parts of the Council area as the Council may, by resolution direct in accordance with section 246(3)(e) of the Act.
- 5.4 Subclauses 9.7.1, 9.7.2, 9.10.2, 9.20.1, and 9.29.1 of this By-law apply throughout the Council area except in such parts of the Council area as the Council may by resolution direct in accordance with section 246(3)(e) of the Act.

6. Interpretation

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

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **animal** includes birds and insects but does not include a dog unless otherwise stated;
- 6.3 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.4 **boat** includes a raft, pontoon, houseboat, personal watercraft or other similar device;
- 6.5 **camp** includes setting up a camp, or causing a tent, swag and/or similar bedding, a caravan, motor home or other camping vehicle, to remain on the land for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the land;
- 6.6 **Council** means the City of Unley;
- 6.7 **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;
- 6.8 **effective control** means a person exercising effective control of an animal either:
 - 6.8.1 by means of a physical restraint; or
 - 6.8.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.9 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules-Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.10 **funeral ceremony** means a ceremony only (i.e. a memorial service) and does not include a burial;
- 6.11 **liquor** has the same meaning as in the *Liquor Licensing Act 1997*;
- 6.12 **Local Government land** means all land owned by the Council or under the Council's care, control and management (except roads);

- 6.13 **offensive** includes threatening, abusive, insulting or annoying behaviour and offend has a complementary meaning;
- 6.14 **open container** means a container that:
- 6.14.1 after the contents of the container have been sealed at the time of manufacture:
 - 6.14.1.1 being a bottle, it has had its cap, cork or top removed (whether or not it has since been replaced);
 - 6.14.1.2 being a can, it has been opened or punctured;
 - 6.14.1.3 being a cask, it has had its tap placed in a position to allow it to be used;
 - 6.14.1.4 being any other form of container, it has been opened, broken, punctured or manipulated in such a way as to allow access to its contents; or
 - 6.14.2 is a flask, glass, mug or other container able to contain liquid;
- 6.15 **personal watercraft** has the same meaning as in the *Harbors and Navigation Act 1993*, which is a device that –
- 6.15.1 is propelled by a motor;
 - 6.15.2 has a fully enclosed hull;
 - 6.15.3 is designed not to retain water if capsized;
 - 6.15.4 is designed to be operated by a person who sits astride, stands, or kneels on the device; and
- and includes the device commonly referred to as a jet ski;
- 6.16 **tobacco product** has the same meaning as in the *Tobacco and E-Cigarette Products Act 1997*;
- 6.17 **road** has the same meaning as in the Act;
- 6.18 **vehicle** has the same meaning as in the *Road Traffic Act 1961*;
- 6.19 **waters** includes a body of water, including a pond, lake, river, creek or wetlands under the care, control and management of the Council; and
- 6.20 **wheeled recreational device** has the same meaning as in the *Road Traffic Act 1961*.

Note-

Section 12 of the *Legislation Interpretation Act 2021* provides that an expression used in a By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law was made.

PART 2 – ACCESS TO LOCAL GOVERNMENT LAND

7. Access

The Council may:

- 7.1 close, or regulate or restrict access to, any part of Local Government land to the public for specified times and days; and
- 7.2 fix charges or fees payable for entry onto any part of Local Government land.

8. Closed Lands

A person must not, without permission, enter or remain on any Local Government land:

- 8.1 which has been closed, or in respect of which access by the public is regulated or restricted in accordance with subclause 7.1;
- 8.2 where entry fees or charges are payable, without paying those fees or charges; or
- 8.3 where the land has been enclosed by fences and/or walls and gates that have been closed and locked or, where a sign is displayed at the entrance of the land notifying that the land has been closed.

PART 3 – USE OF LOCAL GOVERNMENT LAND

9. Activities Requiring Permission

Note-

Pursuant to section 238(3) of the Act, if a Council makes a By-law about access to or use of a particular piece of Local Government land (under section 238), the Council should erect a sign in a prominent position on, or in the immediate vicinity of, the land to which the By-law applies.

A person must not without the permission of the Council, do any of the following on Local Government land.

9.1 Advertising

Display, paint or erect or cause to be displayed, painted or erected, on Local Government land or a structure, building or fixture on Local Government land any sign, advertising or hoarding for the purpose of commercial advertising or any other purpose.

9.2 Alcohol

Consume, carry or be in possession or in charge of any liquor in an open container on Local Government land comprising parks or reserves to which the Council has determined this paragraph applies.

9.3 Amplification

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

9.4 Animals

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

9.4.2 Cause or allow an animal to enter, swim, bathe or remain in any waters located thereupon.

9.4.3 Lead, herd or exercise any 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.

9.5 **Attachments**

Subject to subclause 9.1, attach or cause to be attached, hang or fix anything to a tree, plant, equipment, fence, post, structure or fixture on Local Government land.

9.6 **Bees**

Place a hive of bees thereupon, or allow it to remain thereon.

9.7 **Boats and Mooring**

Subject to the *Harbors and Navigation Act 1993* and the *Marine Safety (Domestic Commercial Vessel) National Law*:

9.7.1 launch or retrieve a boat to or from any waters except in an area to which the Council has resolved this subclause applies;

9.7.2 hire out a boat or otherwise use a boat for commercial purposes except in an area to which the Council has resolved this subclause applies; or

9.7.3 moor any boat on or to Local Government land.

9.8 **Buildings**

Use a building, or structure on Local Government land for a purpose other than its intended purpose.

9.9 **Burials and Memorials**

9.9.1 Bury, inter or spread the ashes of any human or animal (including a dog) remains.

9.9.2 Erect any memorial.

9.10 **Camping and Tent**

9.10.1 Subject to this subclause 9.10, erect a tent or other structure of calico, canvas, plastic or similar material as a place of habitation.

9.10.2 Camp, sleep overnight or occupy any caravan or other camping vehicle for or in connection with undertaking camping activities (including but not limited to washing, cooking, sleeping) except:

9.10.2.1 in an area which has been designated by resolution of the Council for that purpose; and (only then)

9.10.2.2 in accordance with any conditions determined by resolution of the Council and contained in any signage erected thereon.

9.11 Canvassing

Subject to subclause 14.2, convey any advertising, religious or other message to any bystander, passer-by or other.

9.12 Defacing Property

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

9.13 Donations

Ask for or receive or indicate that he or she desires a donation of money or any other thing.

9.14 Encroachment

Erect, maintain or place, or cause to be erected, maintained or placed, any fencing, post, vegetation or other structure or item so as to encroach onto the land.

9.15 Entertainment and Busking

9.15.1 Sing, busk or play a recording or use a musical instrument for the apparent purpose of entertaining others whether or not receiving money.

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

9.16 Equipment

Use an item of equipment, facilities or property belonging to the Council other than in accordance with any conditions of use that are contained on a sign or notice in the vicinity of the equipment, facility or property.

9.17 Fires

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

9.17.1 in a place provided by the Council for that purpose; or

9.17.2 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 four (4) metres.

9.18 Fireworks

Ignite, explode or use any fireworks.

9.19 Flora and Fauna

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

9.19.1 plant, damage, pick, cut, disturb, interfere with or remove any plant, tree or flower thereon;

9.19.2 cause or allow an animal (including a dog) to stand or walk on any flower bed or garden plot;

- 9.19.3 deposit, dig, damage, disturb, interfere with or remove any soil, stone, wood, clay, gravel, pebbles, timber, bark or any part of the land;
- 9.19.4 take, interfere with, tease, harm or disturb any animal, bird or aquatic life or the eggs or young of any animal, bird or aquatic life;
- 9.19.5 pick, collect, take, interfere with or disturb any fruit, nuts, berries or native seeds;
- 9.19.6 disturb, interfere with or damage any burrow, nest or habitat of any animal or bird;
- 9.19.7 use, possess or have control of any device for the purpose of killing or capturing any animal, bird or aquatic life; or
- 9.19.8 collect or take any dead wood or timber or burn any timber or dead wood; –
with the exception that subclauses 9.19.4 and 9.19.7 do not apply to lawful fishing activities or to catching yabbies.

9.20 **Games and Sport**

- 9.20.1 Participate in, promote or organise any organised competition or sport, as distinct from organised social play except on any Local Government land to which the Council has determined this subclause applies.
- 9.20.2 Play, practise or participate in any game which involves the use of a ball, missile or other object which by the use thereof may cause or be likely to cause injury or discomfort to any 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.
- 9.20.3 Engage or participate in or conduct any organised group fitness activity or training on Local Government land to which the Council has resolved this subclause applies.
- 9.20.4 Play or practise any game or sport on Local Government land to which the Council has resolved this subclause applies except at the times determined by the Council and indicated on a sign on or in the vicinity of the land (if any).
- 9.20.5 Participate in any game, recreational activity or event where the Council has caused a notice to be erected indicating the game, recreational activity or event is prohibited.

9.21 **Golf**

Except on a properly constructed golf course or practice fairway, play or practice golf.

9.22 **Interference with Land**

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

- 9.22.1 altering the construction or arrangement of the land to permit or facilitate access from an adjacent property;
- 9.22.2 erecting or installing a structure in, on, across, under or over the land;

- 9.22.3 changing or interfering with the construction, arrangement or materials of the land;
- 9.22.4 planting a tree or other vegetation on the land, interfering with the vegetation on the land or removing vegetation from the land; or
- 9.22.5 otherwise use the land in a manner contrary to the purpose for which the land was designed to be used.

9.23 **Model Aircraft, Boats and Cars**

- 9.23.1 Fly or operate a model or drone 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.
- 9.23.2 Fly or operate a model or drone aircraft, boat or model or remote control vehicle on any Local Government land to which the Council has resolved this subclause applies.

9.24 **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 unsightly (in the opinion of an authorised person).

9.25 **Playing Area**

Use or occupy a playing area:

- 9.25.1 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);
- 9.25.2 in a manner contrary to the purpose for which the playing area was intended to be used or occupied; or
- 9.25.3 contrary to directions of the Council made by resolution and indicated on a sign displayed on or in the vicinity of the playing area.

9.26 **Preaching**

Preach, harangue or solicit for religious purposes.

9.27 **Rubbish Bins**

Remove, disperse or interfere with any rubbish (including bottles, newspapers, cans, containers or packaging) that has been discarded in a bin on any Local Government land, or placed on Local Government land for collection by the Council (or its agent).

9.28 **Shared Transport Devices**

Subject to the *Road Traffic Act 1961*:

- 9.28.1 operate a share transport device scheme;

9.28.2 leave a share transport device on Local Government land other than in accordance with conditions determined by the Council (including as may be set out in a policy from time to time) that are published on the Council's website (if any).

9.28.3 For the purposes of this subclause 9.28:

9.28.3.1 **share transport device** means a bike, scooter or similar that is available for hire (for fee or otherwise) in the Council's area by members of the public in connection with a share transport device scheme, including through the use of a special purpose smartphone application; and

9.28.3.2 **share transport device scheme** means a scheme operated in the Council's area which involves share bikes, scooters (dockless or otherwise) being made available for hire by any person for a fee or otherwise.

9.29 Swimming

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

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

9.29.2 in accordance with any conditions that the Council has determined by resolution apply to such use (if any) and which are specified on signage on or in the vicinity of the area.

9.30 Trading

9.30.1 Sell, buy, offer or display anything for sale, hire or lease any goods, merchandise, commodity, article or thing.

9.30.2 Carry on or cause to be carried on any business.

9.30.3 Set up a van or other vehicle, stall, stand, table or other structure, tray, carpet or device for the purpose (as determined by an authorised officer acting reasonably) of buying, selling, offering, displaying for sale or the hiring or leasing of any goods merchandise, commodity, article or thing.

9.31 Vehicles

9.31.1 Drive or propel a vehicle except on an area or road constructed and set aside by the Council for that purpose.

9.31.2 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.

9.31.3 Repair, wash, paint, panel beat or carry out other work to a vehicle, except for running repairs in the case of a breakdown.

9.32 Weddings, Functions and Special Events

9.32.1 Hold, conduct or participate in a marriage ceremony, funeral or special event.

9.32.2 Erect a marquee, stage or structure for the purpose of holding or conducting a wedding, funeral or special event.

9.32.3 Hold or conduct any filming where the filming is for a commercial purpose.

9.33 **Wheeled Recreational Devices**

Subject to the *Road Traffic Act 1961*, ride a wheeled recreational device on Local Government land to which the Council has determined this subclause applies.

10. **Prohibited Activities**

A person must not do any of the following on Local Government land.

10.1 **Ablutionary Facilities**

In any ablutionary facility (being showers, washing and toilet facilities) on Local Government land:

10.1.1 urinate other than in a urinal or pan or defecate other than in a pan set apart for that purpose;

10.1.2 deposit anything in a pan, urinal or drain which is likely to cause a blockage or damage to the facility or any drain, pipe or property associated with the facility;

10.1.3 use the facility for a purpose for which it was not designed or constructed;

10.1.4 deface, or make use of a facility other than for its proper purpose or cause any unsanitary or unclean condition in any ablutionary facility;

10.1.5 subject to the *Equal Opportunity Act 1984* enter any ablutionary facility that is set aside for use of the opposite gender except:

10.1.5.1 where a child under the age of ten (10) years is accompanied by an adult parent or guardian of that gender;

10.1.5.2 to provide assistance to a person with a disability; or

10.1.5.3 in the case of a genuine emergency.

Note-

To avoid doubt, clause 10.1 does not operate to prohibit a transgender person or, a person who identifies as non-binary or 'gender diverse', from lawfully using an ablutionary facility for the gender with which that person identifies.

10.2 **Animals**

10.2.1 Cause or allow an animal (including a dog) to:

10.2.1.1 damage a flowerbed, garden plot, tree, lawn or like thing or place;
or

10.2.1.2 swim or bathe in any waters to the inconvenience, annoyance or danger of any other person in the vicinity.

10.2.2 Lead, herd or exercise an animal in such manner as to cause a nuisance or endanger the safety of a person.

10.3 **Annoyances**

10.3.1 Annoy, or unreasonably interfere with any other person's use of Local Government land by making a noise or by creating a disturbance that has not been authorised by the Council.

10.3.2 Spit, urinate or defecate other than in toilet provided thereon.

10.4 **Climbing**

Climb on or over any fixture, fitting, plant, object or building thereon other than in a playground or similar area that the Council has set aside for that purpose.

10.5 **Equipment**

Use any item of equipment, facilities or property belonging 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.

10.6 **Fishing**

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

10.7 **Glass**

Willfully break any glass, china or other brittle material.

10.8 **Interference with Permitted Use**

Interrupt or unreasonably interfere with any other person's use of Local Government land where the person is using the land in a manner permitted by the Council or in accordance with any permission that has been granted by the Council.

10.9 **Nuisance**

Behave in such an unreasonable manner as to cause discomfort, inconvenience, annoyance or offence to any other person including by using profane, indecent or obscene language.

10.10 **Playing Games**

Play or practise a game:

10.10.1 which is likely to cause damage to the land or anything on it; or

10.10.2 in any area where a sign indicates that the game is prohibited.

10.11 **Smoking**

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

10.12 **Obstruction**

Obstruct or cause to be obstructed:

10.12.1 any path or track;

10.12.2 any door, entrance, stairway or aisle in any building; or

10.12.3 any gate or entrance thereon.

10.13 Solicitation

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

10.14 Waste & Rubbish

10.14.1 Deposit or leave thereon anything obnoxious or offensive.

10.14.2 Deposit any rubbish other than in receptacles provided by the Council for that purpose.

10.14.3 Deposit in any rubbish bin on Local Government land that is provided by the Council for use by the public (but excluding any residential rubbish bin):

10.14.3.1 any trash emanated from a domestic, trade or commercial source;
or

10.14.3.2 any rubbish contrary to any information on signs on the bin or in its vicinity.

PART 4 – ENFORCEMENT

11. Directions

11.1 A person on Local Government land must comply with a reasonable direction from an authorised person relating to:

11.1.1 that person's use of that land;

11.1.2 that person's conduct and behaviour on that land;

11.1.3 that person's safety on that land; or

11.1.4 the safety and enjoyment of other persons on that land.

11.2 A person who, in the opinion of an authorised person, is likely to commit or has committed, a breach of this By-law must immediately comply with a direction of an authorised person to leave that part of Local Government land.

12. Orders

If a person fails to comply with an order of an authorised person made pursuant to section 262 of the Act in respect of a breach of this By-law, the Council may seek to recover its costs of any action taken under section 262(3) of the Act from the person to whom the order was directed.

Note-

Section 262(1) of the Act states:

If a person (the offender) engages in conduct that is a contravention of this Act or a By-law under this Act, an authorised person may order the offender-

a) If the conduct is still continuing - to stop the conduct; and

b) whether or not the conduct is still continuing-to take specified action to remedy the contravention.

Subsections (2) and (3) of section 262 also provide that it is an offence to fail to comply with an order and that if a person does not comply, the authorised person may take action reasonably required to have the order carried out.

For example, an authorised person may order a person to

- cease smoking on Local Government land;
- remove an object or structure encroaching on Local Government land;
- dismantle and remove a structure erected on Local Government land without permission.

13. 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 the authorised person reasonably believes that no person is in charge of the animal or object.

PART 5 – MISCELLANEOUS

14. Exemptions

- 14.1 The restrictions in this By-law do not apply to any Police Officer, emergency worker, Council officer or Council 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 and while acting under the supervision or in accordance with a direction of a Council Officer.
- 14.2 The restrictions in subclauses 9.11 of this By-law do not apply to electoral matter authorised by a candidate and which is:
- 14.2.1 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;
- 14.2.2 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
- 14.2.3 related to, and occurs during the course of and for the purpose of a referendum.

15. Liability of vehicle owners

- 15.1 For the purposes of this clause 15, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 15.2 The owner and the driver of a vehicle driven, parked or standing in contravention of this By-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This By-law was duly made and passed at a meeting of the City of Unley held on 27 June 2022 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.



.....
PETER TSOKAS
Chief Executive Officer