

ADDITIONAL INFORMATION COUNCIL MEETING: 28 MAY 2019

REPORT 3 ANIMALS, ENVIRONMENT & NUISANCE AMENDMENT LOCAL LAW 2019 (BI) (REPORT 3)

As a result of a submission and recent discussion with a community member minor grammatical and administrative changes are recommended in addition to those outlined in Report 3.

It is considered that the submission made was reasonable and should be included in the Animals, Environment & Nuisance Amendment Local Law 2019 for final adoption. The minor amendments in no way affect the Purpose or Effect of the local law, or substantially amend the local law.

The changes are reflected below in clauses:

- 2.2 (1) (b) no poultry ~~are is~~ able to approach within 15 metres of a public street, public building, commercial premises or food business;
 - (1) (c) all poultry ~~are to be is~~ kept in a properly constructed and securely fastened structure;
 - (1) (d) all structures or enclosures within which poultry are kept are maintained ~~at all times~~ in a clean condition; and
 - (1) (e) all poultry ~~are contained in an enclosure at all times. is kept continually confined.~~
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- 2.3 (1) (b) all structures or enclosures within which pigeons are kept are maintained ~~at all times~~ in a clean condition;
- 2.4 (1) (c) the aviary or cage is kept in clean condition and good repair ~~at all times~~;
- 2.9 (1) ~~Subject to clause 2.12, t~~he local government may –

Council is requested to consider these changes in conjunction with Report 3 and make the local law as shown at **Attachment 2**.

Refer **Attachment 2 Animals, Environment & Nuisance Amendment Local Law 2019**

RECOMMENDATION

That Council adopt the Animals, Environment & Nuisance Amendment Local Law 2019 as shown in Attachment 2.

ABSOLUTE MAJORITY REQUIRED

LOCAL GOVERNMENT ACT 1995

HEALTH (MISCELLANEOUS PROVISIONS) ACT 1911

BIOSECURITY AND AGRICULTURE MANAGEMENT ACT 2007

CITY OF MANDURAH

ANIMALS ENVIRONMENT AND NUISANCE AMENDMENT LOCAL LAW 2019

Under the powers conferred by the *Health (Miscellaneous Provisions) Act 1911*, *Biosecurity and Agriculture Management Act 2007*, *Local Government Act 1995* and under all other powers enabling it, the Council of the City of Mandurah resolved on INSERT DATE to make the following local law.

1.1 Citation

This local law may be cited as the *City of Mandurah Animals Environment and Nuisance Amendment Local Law 2019*.

1.2 Commencement

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

1.3 Principal local law amended

This local law amends the *City of Mandurah Animals, Environment and Nuisance Local Law 2010* as published in *Government Gazette* No. 43 on 22 March 2011.

1.4 Clause 1.2 amended

In clause 1.2:

- (a) delete the following definitions;
 - (i) ***building licence***;
 - (ii) ***food premises***; and

(iii) **townsite.**

(b) insert the following definitions in alphabetical order;

building permit is a permit granted under section 20 of the *Building Act 2011*"; and

food business has the same meaning given in the *Food Act 2008*'.

1.5 Part 2, Division 1 amended

In Part 2 delete Division 1 and insert:

Division 1 – Keeping of birds

2.1 Keeping of poultry and pigeons in a residential zone

An owner or occupier of premises in a residential zone shall not keep or permit to be kept on the premises any poultry or pigeons unless in accordance with the requirements outlined in clauses 2.2, 2.3 and 2.4.

2.2 Requirements for keeping of poultry

- (1) A person who keeps poultry or permits poultry to be kept shall ensure that –
- (a) no poultry shall be kept within 9 metres from any residential building;
 - (b) no poultry ~~are is~~ able to approach within 15 metres of a public street, public building, commercial premises or food business;
 - (c) all poultry ~~are to be is~~ kept in a properly constructed and securely fastened structure;
 - (d) all structures or enclosures within which poultry are kept are maintained ~~at all times~~ in a clean condition; and
 - (e) all poultry ~~are contained in an enclosure at all times, is kept continually confined.~~
- (2) An owner or occupier of premises in a residential zone shall not keep or permit to be kept on the premises –
- (a) more than 12 poultry; and

- (b) more than 12 pigeons unless the owner or occupier is an affiliated person in which case the maximum number of pigeons may be increased to 100.
- (3) A person who fails to comply with subclause (1) or (2) commits an offence.

2.3 Requirements for keeping of pigeons

- (1) A person who keeps pigeons or permits pigeons to be kept shall ensure that –
 - (a) all pigeons are kept in a properly constructed pigeon loft, except where registered homing pigeons are freed for exercise;
 - (b) all structures or enclosures within which pigeons are kept are maintained ~~at all times~~ in a clean condition;
 - (c) no opening to a pigeon loft, including openings for ventilation, is within 9 metres of any residential building;
 - (d) no opening to a pigeon loft, including openings for ventilation, is within 15 metres of a public street, public building, commercial premises or food business.
- (2) An affiliated person who keeps pigeons, or permits pigeons to be kept, shall do so in accordance with the Code of Practice – Pigeon Keeping, subject to the provisions of this local law.
- (3) A person who fails to comply with subclause (1) or (2) commits an offence.

2.4 Requirements for keeping of aviary birds

- (1) A person who keeps, or permits to be kept, aviary birds shall ensure that –
 - (a) the aviary or cage in which the birds are kept is located at least 1 metre from any lot boundary and at least 5 metres from a residential building on any other lot;
 - (b) there is a floor beneath the roofed area of the aviary or cage which is constructed of smooth, impervious material with a gradient of at least 1 in 50 to the front of the aviary or cage;

- (c) the aviary or cage is kept in clean condition and good repair ~~at all times~~;
- (d) all feed for the birds other than that intended for immediate consumption is stored in vermin proof containers; and
- (e) effective measures are taken to prevent the attraction or harbourage or vermin.

(2) A person who fails to comply with subclause (1) commits an offence.

2.5 Roosters, geese, turkeys and peafowl

Except on land in a rural or rural residential zone or with the prior written permission of the local government, an owner or occupier of premises shall not keep any of the following –

- (a) rooster;
- (b) a goose or gander;
- (c) a turkey; or
- (d) a peacock or peahen.

2.6. Nuisance caused by birds

An owner or occupier of land shall not keep any bird or birds which –

- (a) are or create a nuisance; or
- (b) emit an unreasonable noise.

1.6 Part 2, Division 2 amended

In Part 2 delete Division 2 and insert:

Division 2 – Keeping of farm animals

2.7 Keeping of farm animals

- (1) An owner or occupier of land shall not keep, or allow to be kept, any farm animal unless –
 - (a) in accordance with a valid permit authorising the keeping of such a farm animal issued in relation to the land; or
 - (b) in a rural zone and in accordance with the provisions of any local planning scheme applicable to that zone.

- (2) An owner or occupier shall not keep more than one pig other than on premises registered as a piggery pursuant to the provisions of the *Health (Miscellaneous Provisions) Act 1911*, except with the express written approval of the local government.

2.8 Application for a permit to keep farm animals

An application for a permit to keep farm animals shall be in the form approved by the local government.

2.9 Determination of application to keep farm animals

- (1) **Subject to clause 2.12, t**he local government may –
- (a) refuse to determine an application for a permit which does not comply with clause 2.8;
 - (b) approve an application for a permit subject to such conditions as it considers appropriate; or
 - (c) refuse to approve an application for a permit.
- (2) Where an application for a permit is approved subject to conditions, the permit holder shall comply with those conditions or cause compliance with those conditions.
- (3) A permit is valid for one year from the date on which it is issued unless it is –
- (a) otherwise stated in the terms and conditions of the permit; or
 - (b) cancelled under clause 2.10(2).

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2.10 Variation or cancellation of permit to keep farm animals and conditions of permit

- (1) The local government may vary the conditions of a permit after it has been issued, and shall give notice of such variation to the permit holder within 14 days of such variation.
- (2) The local government may cancel a permit in the event the permit holder –

- (a) fails to comply with any condition of the permit; or
- (b) fails to comply with a notice of breach issued under clause 6.1.

2.11 Nuisance caused by farm animals

An owner or occupier of land shall not keep any farm animal or farm animals which –

- (a) are or create a nuisance; or
- (b) emit an unreasonable noise.

1.7 Part 2, Division 3 amended

In Part 2 delete Division 3 and insert:

Division 3 – Keeping of Bees

2.12 Keeping of Bees

A person shall not keep bees or allow bees to be kept on land except in accordance with the requirements outlined in clause 2.13.

2.13 Requirements for Beekeeping

The keeping of bees is subject to the following requirements -

- (a) the provision of a sufficient and suitable water supply on the land which is readily accessible by the bees on the land;
- (b) each bee hive shall be -
 - (i) kept at a distance specified by the local government from any thoroughfare, public place or boundary of the land; or
 - (ii) located near a screen or other barrier so as to prevent the bees flying low over a thoroughfare, public place or adjoining land;
- (c) no more than 2 bee hives are to be kept on land of less than 2,000 square metres in area;
- (d) no more than 15 bee hives are to be kept on land between 2,000 and 20,000 square metres in area; and
- (e) all bee hives must be registered under the *Biosecurity and Agriculture Management Act 2007*.

2.14 Nuisance caused by bees or bee hives

A person shall not keep, or allow to be kept, bees or bee hives, or both, on land so as to create a nuisance.

2.15 Notice to remove bees

- (1) Whenever in the opinion of the local government a person has contravened any provision of this local law which relates to the keeping of bees or bee hives, the local government may give the owner or occupier of the land a written notice requiring her or him to remove any bees or bee hives, or both, from the land within the time specified in the notice.
- (2) Where a person fails to comply with a notice given under subclause (1), the local government may dispose of the bees or the bee hives or both in such manner as it sees fit and recover the costs of so doing from the owner or occupier, as the case may be, as a debt due to it.

1.8 Part 3 amended

In Part 3:

- (1) in Division 1, Clause 3.3 delete subclause (3) and insert

(3) A written request for approval must be accompanied by the written approval of the landowner of the land on which materials are proposed to be stored.;
- (2) delete Division 3 and insert:

Division 3 – Burning of materials

3.5 Burning of cleared vegetation prohibited

- (1) An owner or occupier shall ensure that no vegetation or other material is burnt on the site.
- (2) Subclause (1) does not apply where a fire permit has been issued by the local government under the *Bush Fires Act 1954*.

1.9 Part 4, Division 2 amended

In Part 4 delete Division 2 and insert:

Division 2 – Smoke, fumes, odours and other emissions

4.4 Burning rubbish, refuse or other material

- (1) A person shall not set fire to rubbish, refuse or other materials unless approval has first been obtained by the local government, the burning complies with the *Bush Fires Act 1954*, any annual fire hazard reduction notice issued by the local government under that Act and any conditions of approval as determined by the local government.

- (2) Subclause (1) shall not apply to any barbeque, solid fuel water heater, space heater or ovens fired with dry paper, dry wood, synthetic char or charcoal type fuel.

4.5 Escape of smoke, fumes, odours and other emissions

An owner or occupier of land or premises shall not cause or permit the escape of smoke, fumes or odours from the land or premises in such quantity or of such a nature as to cause or to be a nuisance to any person.

1.10 Part 4, Division 3 amended

In Part 4, delete Division 3.

1.11 Part 4, Division 5 amended

In Part 4, delete Division 5.

1.12 Part 4, Division 6 amended

In Part 4, delete Division 6.

1.13 Part 4 amended

In Part 4, renumber remaining divisions and clauses.

1.14 Schedule 1 amended

Delete Schedule 1.

1.15 Schedule 2 amended

Delete Schedule 2.

1.16 Schedule 3 amended

Delete Schedule 3.

1.17 Schedule 4 amended

Delete Schedule 4.

1.18 Schedule 5 amended

In Schedule 5:

- (1) renumber "Schedule 5" as "Schedule 1";
- (2) delete reference to "4.17(1)" and replace with "4.11(1)"; and
- (3) insert the following in alphabetical order:

Common Name	Scientific Name
Caltrop	Tribulus terrestris
Castor Oil Plant	Ricinus communis
Flaxleaf Broom	Genista Linifolia

1.19 Schedule 6 amended

In Schedule 6:

- (1) renumber "Schedule 6" as "Schedule 2"; and
- (2) delete reference to "4.18" and replace with "4.12".

1.20 Schedule 7 amended

In Schedule 7:

- (1) renumber "Schedule 7" as "Schedule 3";
- (2) delete modified penalties for item no; 1, 2, 3, 4 5, 6, 21, 22, 27, 28 and 29;
- (3) insert the following modified penalties in numerological order:

CLAUSE	DESCRIPTION	MODIFIED PENALTY First Offence	MODIFIED PENALTY Subsequent Offences
2.2	Failure to comply with requirements for keeping poultry	\$125	\$250
2.3	Failure to comply with requirements for keeping pigeons	\$125	\$250
2.4	Failure to comply with requirements for keeping aviary birds	\$125	\$250
2.7(1)(a)	Keeping a farm animal without a permit	\$250	\$500
2.11	Nuisance caused by farm animal	\$250	\$500
2.13	Failure to comply with a requirement for beekeeping	\$125	\$250
2.14	Nuisance caused by bees or bee hives	\$125	\$250
2.15	Failure to comply with notice to remove bees or bee hives	\$125	\$250
3.5	Owner or occupier not to burn on site	\$500	\$500

4.4	Noncompliant burning of rubbish or other materials	\$250	\$500
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- (4) in item no 32, "Failure to comply with Pest Plant Notice":
 - (a) delete \$50 and replace with \$250; and
 - (b) delete \$100 and replace with \$500.
- (5) renumber item number column accordingly.

1.21 Terms used throughout the principle local law

- (1) delete every reference to the "Beekeepers Act 1963"; and
- (2) delete every reference to the "*Health Act 1911*" and replace with "*Health (Miscellaneous Provisions) Act 1911*".

Dated:

The Common Seal of the City of Mandurah was affixed by authority of a resolution of the Council in the presence of:

RHYS JOHN WILLIAMS, Mayor

MARK ROBERT NEWMAN, Chief Executive Officer