

**LOCAL GOVERNMENT ACT 1995**

SHIRE OF YORK

**ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES  
AMENDMENT LOCAL LAW 2011**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of York resolved on 20 June 2011 to make the following local law.

**1. Citation**

This local law is cited as the *Shire of York Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2011*.

**2. Commencement**

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

**3. Principal local law**

In this local law, the *Shire of York Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law* published in the *Government Gazette* on 17 January 2001 is referred to as the principal local law. The principal local law is amended.

**4. Various amendments to terminology**

(1) Delete -

(a) "*Town Planning and Development Act 1928*" where it appears in this local law and substitute-

*Planning and Development Act 2005*

(b) "*Road Traffic Code 1975*" where it appears in this local law and substitute-

*Road Traffic Code 2000*

(c) "*Weight and Measures Act 1915*" where it appears in this local law and substitute-

*Trade Measurement Administration Act 2006*

(d) "*Liquor Licensing Act 1988*" where it appears in this local law and substitute-

*Liquor Control Act 1988*

**5. Part 1 Clause 1.2 amended**

(1) Delete the definitions-

(a) "**carriageway**";

(b) "**footpath**";

(c) "**town planning scheme**";

(d) "**Regulations**";

(2) In the appropriate alphabetical order insert the following definitions —

"**bicycle**" has the meaning given to it in the *Road Traffic Code 2000*;

"**carriageway**" has the meaning given to it in the *Road Traffic Act 2000*;

"**crossover**" has the same meaning as "**crossing**";

"**footpath**" has the meaning given to it in the *Road Traffic Act 2000*;

"**General Regulations**" means the *Local Government (Functions and General) Regulations 1996*;

**“local planning scheme”** means a local planning scheme of the local government made under the *Planning and Development Act 2005*, or a town planning scheme which was made under the *Town Planning and Development Act 1928*, which applies throughout the whole or a part of the district;

**“lot”** has the meaning given to it in the *Planning and Development Act 2005*;

**“thoroughfare”** has the same meaning given to it in the Act, but does not include a private thoroughfare which is not under the management control of the local government;

**6. Part 2 Clause 2.1 amended**

(1) In paragraph (a) delete “6m of an intersection” and substitute-

10m of an intersection, or plant any plant, other than grass and similar plants within 6m of an intersection

(2) In paragraph (g) after “any”, insert-

bicycle,

**7. Part 2 Clause 2.2 amended**

Delete subclause (2) and substitute-

(2) The local government may exempt a person from compliance with subclause (1)-

(a) if that person complies with a policy issued by the local government issued under clause 7.5 in relation to a specific activity in a thoroughfare, verge or footpath; or

(b) on the application of that person.

**8. Part 2 Clause 2.8 amended**

(1) In subclause (b) delete “and”.

(2) In the appropriate alphabetical order, insert-

(d) ensure the verge treatment does not cause a sight distance obstruction to any person using a footpath on the verge or a carriageway or crossing adjoining the verge or in proximity to it;

(e) ensure that the verge treatment does not damage or obstruct a drain, manhole, gully, inspection pit, channel, kerb, or tree planted by the local government; and

(f) ensure that any sprinklers or pipes installed to irrigate a verge treatment:

(i) do not protrude above the level of the lawn when not in use,

(ii) are not used at such times so as to cause unreasonable inconvenience to pedestrians or other persons, and

(iii) do not otherwise present a hazard to pedestrians or other persons.

**9. Part 2, Division 4, Clause 2.16 Public Place amended**

Renumber clause “2.16” to “2.14”.

**10. Part 4 Clause 4.2 amended**

(1) In subclause (2)(b) after “place” delete “or”.

(2) In subclause (2)(c) after “thoroughfare;” insert-

or

(3) After subclause (2)(c) insert-

(d) subject to subclause (4), allow an animal to excrete on a thoroughfare.

(4) After subclause (3) insert-

- (4) An owner of an animal does not commit an offence if the excreta is immediately removed.

**11. Part 4 New Clause 4.3**

Insert –

**4.3 Removal of Vehicle or Animal**

An authorised person may impound an animal or vehicle left in contravention of clause 4.1.

**12. Part 4 New Division 2**

In the appropriate numerical order insert -

*Division 2—Shopping trolleys*

**4.4 Definitions**

In this Division—

“**retailer**” means a proprietor of a shop in respect of which shopping trolleys are provided for the use of customers of the shop; and

“**shopping trolley**” means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

**4.5 Shopping trolley to be marked**

A retailer must clearly mark its name or its trading name on any shopping trolley made available for the use of customers.

**4.6 Person not to leave trolley in public place**

A person must not leave a shopping trolley in a public place or on City property other than in an area set aside for the storage of shopping trolleys.

**4.7 Retailer to remove abandoned trolley**

(1) If a shopping trolley is found in a public place or on City property, other than in an area set aside for the storage of shopping trolleys, the City may advise (verbally or in writing) a retailer whose name is marked on the trolley of the location of the shopping trolley.

(2) A retailer must remove a shopping trolley within 24 hours of being so advised under subclause (1).

**4.8 Retailer taken to own trolley**

In the absence of any proof to the contrary, a shopping trolley is to be taken to belong to a retailer whose name is marked on the trolley.

**4.9 Impounding of abandoned trolley**

An authorised person may impound a shopping trolley that is—

(a) left on a thoroughfare, verge or local government property that is not marked in accordance with clause 4.5; or

(b) not removed by a retailer after having been so advised under clause 4.7(2).

**13. Part 5 Clause 5.16 amended**

Delete clause 5.16 and substitute-

**5.16 Prohibitions on burning**

Subject to any other written law and notwithstanding anything to the contrary in this local law, an application for a permit for the purpose of clause 5.13 is not to be approved by the local government for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna.

**14. Part 6 Clause 6.1 amended**

In paragraph (g) in the definition “trading” after “which are”, insert—  
only

**15. Part 6 Clause 6.3 amended**

Delete subclause (3).

**16. Part 6 Clauses 6.5 and 6.6 deleted**

Delete clauses 6.5 and 6.6.

**17. Part 6 New Division 2**

Insert, in the appropriate numerical order, a new Division 2 as follows —

*Division 2—Outdoor eating facilities on public places*

**6.7 Interpretation**

In this Division—

- “**Facility**” means an outdoor eating facility or establishment on any part of a public place, but does not include such a facility or establishment on private land;  
“**permit holder**” means the person to whom a permit has been issued for the purpose of clause 6.16; and  
“**public place**” has the meaning given to it in clause 6.1.

**6.8 Permit required to conduct Facility**

A person shall not establish or conduct a Facility without a permit.

**6.9 Matters to be considered in determining application**

In determining an application for a permit for the purpose of clause 6.16, the local government may consider in addition to any other matter it considers relevant, whether or not—

- (a) the Facility is conducted in conjunction with and as an extension of food premises which abut on the Facility, and whether the applicant is the person conducting such food premises;
- (b) any abutting food premises are registered in accordance with the *Food Act 2008* and whether the use of the premises is permitted under the local planning scheme;
- (c) the Facility will comply with the *Food Act 2008*;
- (d) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (e) the Facility would—
  - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
  - (ii) impede pedestrian access; and
- (f) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

**6.10 Obligations of permit holder**

- (1) The permit holder for a Facility shall—

- (a) ensure that the Facility is conducted at all times in accordance with the provisions of this local law and the *Food Act 2008*;
  - (b) ensure that the eating area is kept in a clean and tidy condition at all times;
  - (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times;
  - (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of any part of the public place arising from the conduct of the Facility; and
  - (e) be solely responsible for all rates and taxes levied upon the land occupied by the Facility.
- (2) Whenever, in the opinion of the local government, any work is required to be carried out to a Facility, the local government may give a notice to the permit holder for the Facility to carry out that work within the time limited by the notice.
  - (3) In subclause (2), "work" includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

#### **6.11 Removal of Facility unlawfully conducted**

Where a Facility is conducted without a permit, or in contravention of a condition of a permit, any tables, chairs, umbrellas or other equipment may be removed by an authorized person and impounded in accordance with the Act.

#### **6.12 Use of Facility by public**

- (1) A person shall not occupy a chair or otherwise use the equipment in a Facility the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the Facility.
- (2) A person shall leave a Facility when requested to do so by the permit holder.

#### **6.13 Temporary removal of Facility may be requested**

- (1) The permit holder for a Facility is to temporarily remove the Facility when requested to do so on reasonable grounds by an authorized person or a member of the Police Service or an emergency service in the event of an emergency.
- (2) The permit holder may replace the Facility removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

#### **18. Part 7 Clause 7.1 amended**

- (1) In subclause (2)(c), delete "and".
- (2) Renumber paragraph "(d)" to "(e)".
- (3) After subclause (2)(d), insert–
  - (d) contain any other information required, for that particular type of permit, under this local law; and

#### **19. Part 7 Division 1 New Clause 7.3**

- (1) In the appropriate numerical order, insert –

##### **7.3 Relevant consideration in determining application for permit**

- (1) In determining an application for a permit, the local government is to have regard to-
  - (a) any relevant policy of the local government;

- (b) the National Competition Principles Agreement;
  - (c) the desirability of the proposed activity;
  - (d) the location of the proposed activity; and
  - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit on any one or more of the following grounds –
- (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
  - (b) that the applicant is not a desirable or suitable person to hold a permit;
  - (c) such other grounds as the local government may consider to be relevant in the circumstances of the case.

**20. Part 7 Clause 7.7 amended**

- (1) After “apply,”, insert-  
with appropriate modifications
- (2) Delete “mutatis mutandis”.

**21. Part 8 Heading amended**

Delete “APPEALS” and substitute-  
**REVIEW**

**22. Clause 8.1 amended**

- (1) Delete the heading of clause 8.1 and substitute-  
**Objections and review**
- (2) Delete “regulations 33 and 34 of the Regulations” and substitute-  
regulation 33 of the General Regulations

**23. Schedule 1 amended**

Delete Schedule 1 and substitute–

**Schedule 1 – Prescribed Offences**  
**Prescribed Offences**

[cl. 10.4]

ITEM NO.	CLAUSE NO.	DESCRIPTION	MODIFIED PENALTY \$
1	2.1(a)	Plant of 0.75m in height on thoroughfare within 10m of intersection	125
2	2.1(b)	Damaging lawn or garden	125
3	2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	125
4	2.1(d)	Placing hazardous substance on footpath	200
5	2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	350
6	2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	125
7	2.1(g)	Riding of bicycle, skateboard or similar device on mall or veranda of shopping centre	125
8	2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	200
9	2.2(1)(b)	Throwing or placing anything on a verge without a permit	200

10	2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	200
11	2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
12	2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	250
13	2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	350
14	2.2(1)(h)	Felling tree onto thoroughfare without a permit	200
15	2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	200
16	2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
17	2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	200
18	2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	200
19	2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	200
20	2.3(1)	Consumption or possession of liquor on thoroughfare	200
21	2.7(1)	Installation of verge treatment other than permissible verge treatment	250
22	2.8	Failure to maintain permissible verge treatment or placement of obstruction on verge	200
23	2.9	Failure to comply with notice to rectify default	200
24	2.15(2)	Failure to comply with sign on public place	125
25	2.17(1)	Driving or taking a vehicle on a closed thoroughfare	350
26	3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare or verge	125
27	3.2(3)	Erecting or placing of advertising sign in a prohibited area	125
28	4.1(1)	Animal or vehicle obstructing a public place or local government property	125
29	4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	125
30	4.2(2)(b)	Animal on public place with infectious disease	125
31	4.2(2)(c)	Training or racing animal on thoroughfare in built-up area	125
32	4.2(2)(d)	Failure to remove animal excreta	125
33	4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	125
34	5.6(1)	Driving a vehicle on other than the carriageway of a flora road	300
35	5.9	Planting in a thoroughfare without a permit	300
36	5.11	Failure to obtain a permit to clear a thoroughfare	500
37	5.13	Burning of a thoroughfare without a permit	500
38	5.17	Construction of firebreak on thoroughfare without a permit	500
39	5.19	Commercial harvesting of native flora on thoroughfare	500
40	5.20(1)	Collecting seed from native flora on thoroughfare without a permit	350
41	6.2(1)	Conducting of stall in public place without a permit	350
42	6.3(1)	Trading without a permit	350
43	6.6(1)(a)	Failure of stallholder or trader to display or carry permit	125
44	6.6(1)(b)	Stallholder or trader not displaying valid permit	125
45	6.6(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	125
46	6.6(2)	Stallholder or trader engaged in prohibited conduct	125
47	6.8	Establishment or conduct of outdoor eating facility without a permit	350
48	6.10	Failure of permit holder of outdoor eating facility to comply with obligations	200
49	6.12(1)	Use of equipment or outdoor eating facility without purchase of food or drink from facility	125
50	6.12(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	125

51	7.6	Failure to comply with a condition of a permit	200
52	7.10	Failure to produce permit on request of authorized person	125
53	10.1	Failure to comply with notice given under local law	200
54		All other offences not specified	125

**24. Redesignation of clauses**

- (1) Designations "6.7" through to "6.8" are redesignated "6.5" through to "6.6".
- (2) Designations "7.3" through to "7.10" are redesignated "7.4" through to "7.11".

**25. Table of contents amended**

- (1) In Part 2-
  - (a) delete all of Division 2;
  - (b) renumber Divisions "3" through to "7" to "2" through to "6" respectively;
  - (c) renumber Clauses "2.6" to "2.19", inclusive, to "2.4" to "2.17", respectively.
- (2) In Part 4-
  - (a) After clause 4.2 insert-
    - 4.3 Removal of vehicle or animal;
    - (b) renumber clauses "4.3" to "4.7", inclusive, to "4.4" to "4.8", respectively.
    - (c) After renumbered clause 4.8 insert-
      - 4.9 Impounding of abandoned trolley
  - (3) Delete clauses "6.5" and "6.6".
  - (4) Renumber clauses "6.7" to "6.8", inclusive, to "6.5" to "6.6", respectively.
  - (5) After renumbered clause 6.6, insert-

Division 2 – Outdoor eating facilities on public places

- 6.7 Interpretation
- 6.8 Permit required to conduct facility
- 6.9 Matters considered in determining application
- 6.10 Obligations of permit holder
- 6.11 Removal of facility unlawfully conducted
- 6.12 Use of facility by public
- 6.13 Temporary removal of facility may be requested".
- (6) After clause 7.2, insert-
  - 7.3 Relevant considerations in determining permits
- (7) Renumber clauses "7.3" to 7.10", inclusive, to "7.4" to "7.11", respectively.

Dated: 20 June 2011

The Common Seal of the Shire of York was affixed by the authority of a resolution of the Council in the presence of—

J P HOOPER, Shire President.

R P HOOPER, Chief Executive Officer.



