
**BIRDS, ANIMALS, POULTRY AND RODENTS
LOCAL LAW 6**

PART 1 - PRELIMINARY PROVISIONS**Title**

- 1 This Local Law may be cited as the Birds, Animals, Poultry, Rodents and Bees Local Law (Local Law No. 6 of 2005).

Objectives

- 2 The purpose of this Local Law is to:
- (a) provide for the peace order and good government of the **municipal district**; and
 - (b) provide for the administration of the **Council's** powers and functions; and
 - (c) provide for the welfare of birds, **animals, poultry and rodents** that are kept by residents or ratepayers within the **municipal district**; and
 - (d) regulate the keeping of any birds, **animals, poultry, rodents** or bees, and regulate or prohibit the keeping of any place, or the storage of any things, related to the keeping of birds, **animals, poultry, rodents** or bees which in the opinion of the **Council** may be offensive, injurious to health or dangerous; and
 - (e) regulate the keeping of birds, **animals, poultry** or **rodents**, by limiting the number kept on any **property** within any area within the **municipal district**; and
 - (f) regulate the cleanliness of housing and surrounds for birds, **animals, poultry** or **rodents**, as well as the manner in which food for such **animals** is kept; and
 - (g) suppress nuisances; and
 - (h) prevent objectionable noises at unreasonable times.

Authority to Make the Local Law

- 3 This Local Law is made pursuant to section 111 of the **Act**.

Commencement Date

- 4 This Local Law comes into operation on the day after notice of its making is published in the Government Gazette.

Revocation of Earlier Local Law

- 5 Birds, Animals, Poultry and Rodents Local Law (Local Law No. 6 of 1999) is hereby revoked.

Revocation Date

- 6 Unless sooner revoked, this Local Law ceases to operate on the tenth anniversary of its making.

Application of the Local Law

- 7 Unless otherwise stated, this Local Law applies at all times throughout the entire **municipal district**.

Definition of Words used in this Local Law

- 8 Unless inconsistent with the context, in this Local Law the following words are defined to mean:

“**Act**” means the *Local Government Act 1989*.

“**animal**” includes any reptile except where otherwise stated.

“**Authorised Officer**” means a person appointed by the **Council** under section 224 of the **Act**.

“**bird cage**” means any building or structure or part thereof for the housing or use of birds and includes any area of **land** adjacent to any such building or structure or such part thereof used as a **pen**, compound or yard for birds and not being within the curtilage of the house or commercial premises.

“**cat**” means a cat of either sex over the age of 12 weeks, and includes any de-sexed cat over the age of 12 weeks.

“**cattery**” means any building or structure or part thereof for the housing or use of one or more **cats**, and includes any area of **land** adjacent to any such building or structure or such part thereof used as a **pen**, compound or yard for cats.

“**the Council**” means Kingston City Council.

“**Council land**” means all **land** owned, leased, managed or occupied by the **Council** and includes land vested in the **Council**.

“**dog**” means a dog of either sex over the age of 12 weeks, and includes any de-sexed dog over the age of 3 months.

“**domestic animal**” means any **livestock** in a domesticated state or under the control of humans, regardless of whether **livestock** of its species are categorised at common law as being of a tame or domestic nature.

"**dwelling**" means any building or portion of a building or tent or vehicle which is used or intended, adapted or designed for use for living purposes or to be frequented by any person, excluding a **small lot dwelling**.

"**Environmental Health Officer**" means any Environmental Health Officer appointed by the **Council** including the Chief Environmental Health Officer.

"**game birds**" means ducks, geese, peacocks, pheasants and turkeys of any age.

"**hive**" means any structure or receptacle or part thereof housing a managed honeybee colony in accordance with the *Livestock Disease Control Act 1994*.

"**kennel**" means any building or structure or part thereof for the housing or use of one or more **dogs** and includes any area of **land** adjacent to any such building or structure or such part thereof used as a **pen**, compound or yard for **dogs**.

"**land**" has the meaning ascribed to it by the *Interpretation of Legislation Act 1984*.

"**large birds**" means any pigeons, cockatoos, parrots or other birds but does not include **poultry**, domestic birds or **small birds**.

"**litter device**" means an apparatus designed for or able to be used for the purpose of removing **animal** and/or **dog** excrement and includes a paper or plastic bag.

"**livestock**" means any non-human **animal** and any fish or bird whether wild or domesticated.

"**municipal district**" means the area from time to time comprising the municipal district of the **Council**.

"**offence**" means an offence against or breach of a provision of this Local Law or a breach of a **permit**, notice or direction issued under it.

"**pen**" means any building or structure or part thereof for the housing or use of **rodents** or **reptiles** and includes any area of **land** adjacent to any such building or structure or any part thereof used as a compound or yard for **rodents** or **reptiles**.

"**penalty**" means the maximum fine that may be imposed by a court of appropriate jurisdiction.

"**penalty unit**" has the meaning ascribed to it by section 110 of the *Sentencing Act 1991*.

"**permit**" means a permit issued in writing by the **Council** and under the provisions of this Local Law.

"**poultry**" means fowls of any age but does not include ducks, geese, peacocks, pheasants or turkeys.

"**poultry house**" means any building or structure or part thereof for the housing or use of **poultry** or **game birds**, and includes any area of **land** adjacent to any such building or structure or any part thereof used as a **pen**, compound or yard for **poultry** or **game birds**.

"**property**" means any **land**, **dwelling** or **small lot dwelling** in separate ownership or separate occupation.

"**Public Holidays**" means the days appointed as Public Holidays under sections 6 and 7 of the *Public Holidays Act* 1993, and those days substituted as Public Holidays under section 8 of that Act, that are applicable to the **municipal district**.

"**public place**" has the meaning ascribed to it by the *Summary Offences Act* 1966.

"**reptile**" includes any snake, lizard, turtle, tortoise or terrapin.

"**road**" has the meaning ascribed to it by the **Act**.

"**rodent**" includes any ferret, guinea pig, hamster, mouse, rat or rabbit.

"**Schedule**" means a Schedule to this Local Law.

"**Senior Officer**" has the meaning ascribed to it by the **Act**.

"**small birds**" means budgerigars, canaries or finches.

"**small lot dwelling**" means any **dwelling** or lot of less than 530 metres² or any **dwelling** where two or more **dwellings** are constructed on the same parcel of **land**.

"**stable**" means any building or structure or part thereof for the housing or use of **animals**, and includes any area of **land** adjacent to any such building or structure or any part thereof used as a **pen**, compound or yard for **animals**.

"**swarm**" is a stationary cluster of honeybees that has lodged in an enclosed space or cavity or flying mass of honeybees.

NOTE:

Unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.

Words, the meaning of which is defined in clause 8 of this Local Law or elsewhere in it, appear in bold type in the text.

PART 2- KEEPING OF CATS AND DOGS**Restriction on Number of Dogs per Property****9**

- (1) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than 4 **dogs** on the **property** if it has an area of more than 4000 metres².

Penalty: Five (5) Penalty Units

- (2) The owner or occupier of any **property** which is a **small lot dwelling** must not, without a **permit**, keep or permit or allow or cause to be kept more than one **dog** in or on the **small lot dwelling**.

Penalty: Five (5) Penalty Units

- (3) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than two **dogs** on the **property** if it has an area of less than 4000 metres².

Penalty: Five (5) Penalty Units**Restriction on Number of Cats per Property****10**

- (1) The owner or occupier of any **property** within the boundaries of Governor Road south to the Mordialloc Main Drain, and Springvale Road west to the proposed Mornington Peninsula Freeway, to be known as “The Waterways”, and depicted in [**insert details of plan**], must not keep or permit or allow to be kept any **cat** on such **property**.

Penalty: Five (5) Penalty Units

- (2) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than two **cats** on the **property** if it has an area of less than 4000 metres².

Penalty: Five (5) Penalty Units

- (3) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than four **cats** on the **property** if it has an area of 4000 metres² or greater.

Penalty: Five (5) Penalty Units

- (4) Sub-clause (1) does not apply to persons who purchased **property** during stage 1 of “The Waterways” and who owned one or more **cats** at the time of purchase, provided that:

- (a) the **cat** is confined indoors or in a totally enclosed **pen** or yard on the premises; and
 - (b) when the **cat** is outside the owner's **dwelling**, it is confined within an enclosed cage.
- (5) The exception provided under sub-clause (4) lapses upon the sale of the relevant **property**.

PART 3 - KEEPING OF RODENTS AND REPTILES**Restrictions on Number of Rodents or Reptiles per Property****11**

- (1) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than two **rodents** or **reptiles** on the **property** if it has an area less than 530 metres².

Penalty: Five (5) Penalty Units

- (2) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than five **rodents** or **reptiles** on the **property** if it has an area of 4000 metres² or less.

Penalty: Five (5) Penalty Units

- (3) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than 10 **rodents** or **reptiles** on the **property** if it has an area greater than 4000 metres².

Penalty: Five (5) Penalty Units

- (4) Sub-clauses (1) (2) and (3) do not apply to those persons licensed pursuant to the *Wildlife Act 1975* and who comply with the *Wildlife Act 1975* and *Wildlife Regulations 2002*.

PART 4 - KEEPING OF OTHER ANIMALS**Restriction on Number of Animals per Property****12**

- (1) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept any **domestic animal** on the **property** which comprises an area of less than 4000 metres².

Penalty: Five (5) Penalty Units

- (2) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept any pig or swine on the **property**.

Penalty: Five (5) Penalty Units

- (3) Sub-clauses (1) and (2) do not apply to those persons licensed pursuant to the *Wildlife Act 1975*, and who comply with the *Wildlife Act 1975* and *Wildlife Regulations 2002*.

PART 5 - KEEPING OF POULTRY AND “GAME BIRDS”**Restrictions on Number of Game Birds or Poultry per Property****13**

- (1) The owner or occupier of any **property** which is a **small lot dwelling** must not keep or permit or allow or cause to be kept any live **game birds** or **poultry** in or on the **small lot dwelling**.

Penalty: Five (5) Penalty Units

- (2) The owner or occupier of any **property** (not being a **small lot dwelling**) must not, without a **permit**, keep or permit or allow or cause to be kept more than 2 live **game birds** or 10 **poultry** on the **property** if it has an area of less than 4000 metres².

Penalty: Five (5) Penalty Units

- (3) The owner or occupier of any **property** (not being a **small lot dwelling**) must not, without a **permit**, keep or permit or allow or cause to be kept more than 25 live **game birds** or **poultry** on the **property** if it has an area of 4000 metres² or greater.

Penalty: Five (5) Penalty Units

- (4) The owner or occupier of any **property** must not keep or permit or allow or cause to be kept any **poultry** or **game birds** on the **property** unless such **poultry** or **game birds** are kept within a **poultry house** which complies with the requirements set out in **Schedule 3**.

Penalty: Five (5) Penalty Units

- (5) Sub-clauses (1), (2), (3) and (4) do not apply to those persons licensed under the *Wildlife Act 1975*, and who comply with the *Wildlife Act 1975* and *Wildlife Regulations 2002*.

- (6) Any person applying for a **permit** pursuant to any of the provisions in this Part must include:

(a) a full description of the **property**, together with all other relevant information regarding the place and manner in which the **animals** or birds are to be kept, or the building or structure to be erected or constructed (as the case may be); and

(b) a block plan with measurements showing the portion of the **property** in which it is intended to keep the **animals** or birds, or to erect or construct the building or structure (as the case may be); and

(c) such further information as the **Council** may require.

PART 6 - KEEPING OF OTHER BIRDS**Restriction on Number of Large Birds per Property****14**

- (1) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than five **large birds** on the **property** if it has an area greater than 530 metres².

Penalty: Five (5) Penalty Units

- (2) The owner or occupier of a **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than two **large birds** (including pigeons) on the **property** if it has an area of 530 metres² or less.

Penalty: Five (5) Penalty Units

- (3) Sub-clauses (1) and (2) do not apply to those persons licensed under the *Wildlife Act 1975*, and who comply with the *Wildlife Act 1975* and *Wildlife Regulations 2002* and the code of practice for the housing of caged birds made under section 7 of the *Prevention of Cruelty to Animals Act 1986*.

- (4) Any person applying for a **permit** pursuant to any of the provisions in this Part must include:

(a) a full description of the **property**, together with all other relevant information regarding the place and manner in which the **animals** or birds are to be kept, or the building or structure to be erected or constructed (as the case may be); and

(b) a block plan with measurements showing the portion of the **property** in which it is intended to keep the **animals** or birds, or to erect or construct the building or structure (as the case may be); and

(c) such further information as the **Council** may require.

Restriction on Number of Small Birds per Property**15**

- (1) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than 10 **small birds** on the **property** if it has an area of 530 metres² or less.

Penalty: Five (5) Penalty Units

- (2) The owner or occupier of any **property** must not, without a **permit**, keep or permit or allow or cause to be kept more than 50 **small birds** on the **property** if it has an area greater than 530 metres².

Penalty: Five (5) Penalty Units

- (3) Sub-clauses (1) and (2) do not apply to those persons licensed under the *Wildlife Act 1975*, and who comply with the *Wildlife Act 1975* and *Wildlife Regulations 2002* and the code of practice for the housing of caged birds made under section 7 of the *Prevention of Cruelty to Animals Act 1986*.
- (4) Any person applying for a **permit** pursuant to any of the provisions in this Part must include:
 - (a) a full description of the **property**, together with all other relevant information regarding the place and manner in which the **animals** or birds are to be kept, or the building or structure to be erected or constructed (as the case may be); and
 - (b) a block plan with measurements showing the portion of the **property** in which it is intended to keep the **animals** or birds, or to erect or construct the building or structure (as the case may be); and
 - (c) such further information as the **Council** may require.

PART 7 - KEEPING OF BEES**European Wasps and Feral Honeybees****16**

- (1) The owner or occupier of any **property** must not keep or allow to remain on the **property** any European or English wasps and upon receiving notice to do so from an **Authorised Officer** must eradicate or cause to be eradicated any wasps nest.

Penalty: Ten (10) Penalty Units

- (2) The owner or occupier of any **property** must not keep or allow to remain on the **property** any honeybee **swarm** or feral honeybee nest and upon receiving notice to do so by an **Authorised Officer** must eradicate or cause to be eradicated any wasps' nest.

Penalty: Ten (10) Penalty Units

- (3) An **Authorised Officer** may remove bees or wasps from any **property** where if they present as a risk.
- (4) Sub-clauses (1), (2) and (3) do not apply to those persons licensed pursuant to the *Wildlife Act 1975*, and who comply with the *Wildlife Act 1975* and *Wildlife Regulations 2002*.

PART 8 - GENERAL PROVISIONS**Application**

17 This Part applies to Parts 2, 3, 4, 5, 6, and 7 of this Local Law.

Public Health and Nuisance Issues

18

- (1) The owner or occupier of any **property** must not keep or store or cause or permit or allow to be kept or stored on any **property** where any **dog, cat, animal, reptile, rodent, poultry, game bird** or other bird is kept any food for consumption by any **dog, cat, animal, reptile, rodent, poultry, game bird** or other bird unless such food is stored in a rodent proof receptacle/s or rodent-proof building/s.
- (2) The owner or occupier of any **property** on which **animals, bees, rodents, poultry** or birds are kept must maintain every **kennel, cattery, stable, hive, pen, poultry house** or **bird cage** on that **land** in a clean and sanitary condition at all times, so as not to cause a nuisance or offensive conditions.
- (3) A person referred to in sub-clause (2) must ensure that no polluted drainage is discharged beyond the boundaries of any **property** from which it emanates, or into any watercourse or drain.
- (4) A person referred to in sub-clause (2) must ensure that polluted drainage and other discharges from **animals, rodents, poultry** or birds on his or her **property** is treated and/or absorbed on such **property**.
- (5) A person referred to in sub-clause (2) must ensure that every **kennel, cattery, stable, pen, poultry house** or **bird cage** erected under the provisions of this Part has an area of 1.5 metres around the perimeter of such **kennel, cattery, stable, pen, poultry house** or **bird cage** kept clear of all dry grass, weeds, refuse or other materials capable of harbouring vermin.
- (6) The owner or occupier of any **property** must not cause or permit or allow any objectionable **animal** (other than **cat** or **dog**), **poultry, game bird** or other bird noises or sound at unreasonable times by the keeping of any such **animal, rodent** or **poultry, game birds** or other birds.
- (7) For the purposes of sub-clause (6) unreasonable times are those outside the hours of 7am to 8pm Monday to Friday and 9am to 8pm Saturdays, Sundays and **Public Holidays**.
- (8) For the purpose of sub-clause (6) objectionable **animal, poultry, game bird** or other bird noise will be noise from any of those sources which adversely affects the comfort, convenience or privacy of any person

residing in the locality whether caused or permitted by any conscious or active act, omission or default or by any other means.

- (9) The **Council** may, upon receipt of -
- (a) a written complaint by a person stating -
 - (i) that they reside within hearing of any premises whereon any **animal, poultry, game birds** or other birds are kept; and
 - (ii) that he or she is adversely affected in their privacy, comfort or convenience by reason of any objectionable noise or sound emanating from such **animal, poultry, game birds** or other birds at unreasonable times; or
 - (b) a report from a member of the **Council's** staff-

if substantiated, resolve to serve on the owners or occupiers of such premises, or any of them, a **notice to comply** instructing such owners or occupiers to cause the noise or sound to be abated within a nominated time after the service of the **notice to comply**.

Grazing Animals

19

- (1) The owner or occupier of **land** used or partly used for the grazing of **livestock** must ensure that fencing is adequate for the purpose of preventing **livestock** from straying onto any adjacent **road**.

Penalty: Ten (10) Penalty Units

- (2) A person must not, without a **permit**, allow or fail to prevent a grazing **animal** owned by him or her from wandering, grazing or otherwise being at large on any **road, Council Land** or other **land**.

Penalty: Five (5) Penalty Units

Dog and Animal Litter

20

- (1) A person in charge of a **domestic animal** or **livestock** must not allow any part of **domestic animal** or **livestock** excrement to remain on any **road** or **Council land** or on or in any **public place**.

Penalty: Five (5) Penalty Units

- (2) A person in charge of a **domestic animal** or **livestock** on any **road** or **Council land** or on or in any **public place** must carry a **litter device** and must produce the litter device upon request of an **Authorised Officer**.

Penalty: Five (5) Penalty Units

Litters of Animals

- 21** For the purpose of calculating the maximum number of **animals** kept, the progeny of any **dog** or **cat** lawfully kept will be exempt for a period of 12 weeks after their birth.

Permits Relating to the Number of Animals or Birds Kept**22**

- (1) In determining whether to grant a **permit** for the keeping of **animals** or birds where the number exceeds that determined by the **Council** and which is set out in this Local Law, the **Council** must take into account -
- (a) the zoning of the **land**; and
 - (b) extent of compliance with any guidelines for the siting of structures, housing, **animals** or birds issued by the **Council**; and
 - (c) the amenity of the area (ie noise, smell, drainage, vermin and the like); and
 - (d) the type and additional numbers of birds and **animals** to be kept; and
 - (e) the likely effects on adjoining owners; and
 - (f) any provisions of the **Council's** Planning Scheme; and
 - (g) the adequacy of **animal** shelters. In determining what may be adequate shelter, consideration should be given to:
 - (i) the type of **animals** to be kept; and
 - (ii) the height of the shelter; and
 - (iii) the distance from the street frontage of the **property**; and
 - (iv) the distance from any other **road**; and
 - (v) whether the minimum distance from the boundary of any adjoining **property** is one metre; and
 - (vi) whether the minimum distance from any **dwelling** is nine metres; and
 - (h) any other matter relevant to the circumstances associated with the application.

PART 9 - ADMINISTRATION**Applying for a Permit****23**

- (1) A person who wishes to apply for a **permit** may do so by:
 - (a) lodging with the **Council** an application in a form or to the effect of **Schedule 4**; and
 - (b) paying to the **Council** the appropriate application fee.
- (2) The **Council** may require an applicant to provide additional information before dealing with an application for a **permit**.
- (3) The **Council** may require a person making an application for a **permit** to give public notice which will entitle any person to make a submission and to be heard about it.

Fees**24**

- (1) The **Council** may by resolution, from time to time, determine fees for the purposes of this Local Law.
- (2) In determining any fees and charges, the **Council** may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.
- (3) The Council may waive, reduce or alter a fee with or without conditions.

Issue of Permits**25**

- (1) The **Council** may:
 - (a) issue a **permit**, with or without conditions; or
 - (b) refuse to issue a **permit**.

Duration of Permits**26**

- (1) A **permit** is in force until the expiry date indicated on the **permit** unless it is cancelled before the expiry date.
- (2) If no expiry date is indicated on the **permit**, the **permit** expires on 30 June next after the day on which it is issued.

Conditional Permits**27**

- (1) A **permit** may be subject to conditions which the **Council** considers to be appropriate in the circumstances including:
 - (a) the payment of a fee or charge; and
 - (b) a time limit to be applied either specifying the duration commencement or completion date; and
 - (c) the happening of an event; and
 - (d) the rectification remedying or restoration of a situation or circumstance; and
 - (e) where the applicant is not the owner of the subject **property**, the consent of the owner; and
 - (f) the granting of some other **permit** or authorisation; and
 - (g) any other matters considered relevant to a particular application.
- (2) The conditions of a **permit** must be set out in or attached to the **permit**.
- (3) The **Council** may, during the currency of a **permit**, alter the conditions of a **permit** if it considers it to be appropriate to do so, after providing the permit holder with an opportunity to make comment on the proposed alteration.
- (4) A person who undertakes an activity for which the **Council** has issued a **permit** must comply with the conditions of the **permit**.

Penalty: Five (5) Penalty Units**Cancellation of a Permit****28**

- (1) The **Council** may cancel a **permit** if it considers that:
 - (a) there has been a serious or ongoing breach of the conditions of the **permit**; or
 - (b) a **notice to comply** has been issued, but not complied with within the time specified in the **notice to comply**; or
 - (c) there was a significant error or misrepresentation in the application for the **permit**; or
 - (d) in the circumstances, the **permit** should be cancelled.

- (2) Before it cancels a **permit**, the **Council** must, if it is practicable to do so, provide to the **permit** holder an opportunity to make comment on the proposed cancellation.
- (3) If a **permit** holder is not the owner of the subject **land** and the owner's consent was required to be given to the application for the **permit**, the owner must be notified of any **notice to comply** and of the reason why it has been served.

Correction of Permits

29

- (1) The **Council** may correct a **permit** in relation to:
 - (a) a clerical mistake or an error arising from any accident, slip or omission; or
 - (b) an evident material miscalculation or an evident material mistake of description of a person, thing or **property**.
- (2) The **Council** must notify a permit holder in writing of any correction.

Registers

30

- (1) The **Council** must maintain a register of **permits**, including details of corrections and cancellations.
- (2) The **Council** must maintain a register of determinations made and of guidelines prepared, for the purposes of this Local Law.

Exemptions

31

- (1) The **Council** may by written notice exempt any person or class of persons from the requirement to obtain a **permit**, either generally or at specified times.
- (2) The **Council** may require an applicant to provide additional information before dealing with an application for an exemption from the requirement to obtain a **permit**.
- (3) An exemption from the requirement to obtain a **permit** may be granted subject to conditions.
- (4) A person must comply with the conditions of an exemption from the requirement to obtain a **permit**.

Penalty: Two (2) Penalty Units

- (5) An exemption from the requirement to obtain a **permit** may be cancelled or corrected as if it were a **permit**.

Offences

- 32** A person who makes a false representation or declaration (whether oral or in writing), or who omits relevant information, in an application for a **permit** or exemption is guilty of an **offence**.

Penalty: Ten (10) Penalty Units

Delegation

33

- (1) In accordance with section 114 of the **Act**, the **Council** delegates to:
- (a) the **Chief Executive Officer** and to each **Senior Officer** and to any person for the time being acting for such persons all the powers, discretions and authorities of the **Council** under this Local Law including the powers, discretions and authority to issue or refuse **permits**, fix conditions and durations relevant to such **permits**, cancel **permits**, require additional information, apply guidelines or policies of the **Council**, to waive the need for any **permit**, to waive, fix or reduce fees or charges or to do any act, matter or thing necessary or incidental to the exercise of any function or power of the **Council**; and
 - (b) an **Environmental Health Officer** and to any person for the time being acting for that person the power to issue or refuse **permits** and apply conditions, exercise discretions and require additional information.

Power of Authorised Officers to Direct - Notice to Comply

- 34** An **Authorised Officer** may by serving a **notice to comply** in the form or to the effect of **Schedule 2** direct a person who appears to be in breach of this Local Law to remedy any situation which constitutes a breach under this Local Law.

Time to Comply

35

- (1) A **notice to comply** must state the time and date by which the situation must be remedied.
- (2) The time required by a **notice to comply** must be reasonable in the circumstances having regard to:
- (a) the amount of work involved; and
 - (b) the degree of difficulty; and

- (c) the availability of necessary materials or other necessary items; and
- (d) climatic conditions; and
- (e) the degree of risk or potential risk; and
- (f) any other relevant factor.

Failure to Comply with a Notice to Comply

36 A person who fails to comply with a **notice to comply** served on that person is guilty of an **offence**.

Penalty: Five (5) Penalty Units

Power of Authorised Officer to Act in Urgent Circumstances

37

- (1) In urgent circumstances arising as a result of a failure to comply with this Local Law an **Authorised Officer** may take action to remove remedy or rectify a situation without first serving a **notice to comply** if:
 - (a) the **Authorised Officer** considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a **notice to comply** may place a person, **animal**, **property** or thing at risk or in danger; and
 - (b) wherever practicable, a **Senior Officer** is given prior notice of the proposed action.

Power of Authorised Officer to Act in Urgent Circumstances

- (2) In deciding whether circumstances are urgent, an **Authorised Officer** must take into consideration, to the extent relevant:
 - (a) whether it is practicable to contact:
 - (i) the person by whose default, permission or sufferance the situation has arisen; or
 - (ii) the owner or the occupier of the premises or **property** affected; and
 - (b) whether there is an urgent risk or threat to public health, public safety, the environment or **animal** welfare.
- (3) The action taken by an **Authorised Officer** under sub-clause (1) must not extend beyond what is necessary to cause the immediate abatement of or minimise the risk or danger involved.

- (4) The **Authorised Officer** who takes action under sub-clause (1) must ensure that, as soon as practicable:
- (a) details of the circumstances and remedying action are forwarded to the person on whose behalf the action was taken; and
 - (b) a report of the action taken is submitted to the **Chief Executive Officer**.

Offences

- (5) A person who –
- (a) contravenes or fails to comply with any provision under this Local Law; or
 - (b) contravenes or fails to comply with any condition contained in a **permit** issued under this Local Law; or
 - (c) contravenes or fails to comply with a **notice to comply** within the time specified in the **notice to comply** -
- is guilty of an **offence** and is liable to:
- (d) the **penalty** stated under a provision, or, if no **penalty** is stated, a **penalty** not exceeding \$1,000 for a first **offence**; and
 - (e) a further **penalty** of \$200 for each day after conviction during which the contravention continues; and
 - (f) upon conviction for a second or subsequent offence, double the **penalty** stated under a provision or \$2,000, whichever is the lesser, or, if no **penalty** is stated, a **penalty** not exceeding \$2,000.
- (6) As an alternative to prosecution for an **offence**, a person may be served with an infringement notice.

Infringement Notices

38

- (1) The fixed **penalty** in respect of an infringement notice is the amount set out in **Schedule 1**.
- (2) An **Authorised Officer** may issue an infringement notice in the form of the infringement notice in **Schedule 2**.

Payment of Penalty**39**

- (1) A person issued with an infringement notice may pay the **penalty** indicated to the **Chief Executive Officer**, Kingston City Council, Council Offices (wherever located from time to time).
- (2) To avoid prosecution, the **penalty** indicated must be paid within 28 days after the day on which the infringement notice is issued.
- (3) A person issued with an infringement notice is entitled to disregard the notice and defend the prosecution in Court.

SCHEDULE 1**INFRINGEMENT NOTICE PENALTIES****FOR OFFENCES AGAINST THIS LOCAL LAW**

<u>Clause</u>	<u>Offence</u>	<u>Penalty Units</u>
9-20	Offences concerning the keeping of Birds, Animals, Poultry and Rodents	2
27(4)	Failure to comply with a condition of Permit	2
31(4)	Failure to comply with a condition of an exemption	2
32	False representation or omission relating to an application	2
36	Failure to comply with a Notice to Comply	2

KINGSTON CITY COUNCIL

LOCAL LAW 5

SCHEDULE 2					
CITY OF KINGSTON Penalty Notice			No. 00000 Date of Notice		
Traffic	[]	Parking	[]	Litter	[]
E.P.A.	[]	Local Laws	[]	Recreation Vehicle	[]
Marine Act	[]	OTHER	[]	_____	
Family Name (or Company)			Given Names		
Address					
Licence/Works Approval/Permit No.					
Vehicle/Boat Reg No.		State:		Type:	
Your Offence			Penalty		
_____			Code \$ _____		
Time	_____	Street	_____		
	am pm				
Date	____/____/____	Place	_____		
Information about the offence					
YOU ARE ENTITLED TO DISREGARD THIS NOTICE AND DEFEND THE PROSECUTION FOR THE OFFENCE IN COURT					

BY POST Within 28 DAYS send this notice and a cheque or money order for the FULL AMOUNT (not part payments) to: P.O. Box	HOW TO PAY THE PENALTY IN PERSON Within 28 DAYS take this notice and your payment for the FULL AMOUNT to: Municipal Office Kingston City Council 9.00am - 4.00pm Mon – Frid	NOTE: CHEQUES or MONEY ORDERS should be marked “NOT NEGOTIABLE” and made out to: City of Kingston
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IF PAYMENT IS NOT RECEIVED WITHIN 28 DAYS, COSTS WILL BE ADDED AND THE MATTER WILL BE TAKEN TO COURT. (FOR DETAILS READ THE OTHER SIDE OF THIS NOTICE)	
Signature of Issuing Officer	Name
Office Address	

LOCAL LAW 6

SCHEDULE 3

POULTRY HOUSES

- 1 Each **poultry house** or similar structure shall-
 - (a) be constructed of approved materials; and
 - (b) be paved with approved impervious material; and
 - (c) have the floor level at least 75 millimetres above the surrounding ground level; and
 - (d) be constructed so as to hold at least 150 millimetres in depth of litter.

- 2 No person shall erect or allow to remain erected any **poultry house** or similar structure exceeding 2.4 metres in height and a total superficial area of 10 square metres or more than one such fowl house or similar structure on any **property**, unless a building **permit** has been acquired.

- 3 All **animal** shelters must be maintained in accordance with the following standards so that:
 - (a) all manure and other waste is removed and/or treated as often as necessary so that it does not cause a nuisance or offensive condition; and
 - (b) all manure and other waste is to be stored in a fly and vermin proof receptacle until removed from the premises or otherwise disposed of; and
 - (c) the ground surrounding the shelter is drained; and
 - (d) the area of **land** within 1.5 metres of the area or structure in which the **animal** is kept must be kept free from dry grass, weeds, refuse, rubbish or other material capable of harbouring vermin; and
 - (e) all food, grain or chaff is kept in vermin proof receptacles; and
 - (f) the area where **animals** are kept must be thoroughly cleaned and maintained at all times in a clean and sanitary manner; and
 - (g) all **poultry houses** must be a minimum of 1.5 metres from any boundary fence; and
 - (h) must be a minimum of 4 metres from any **dwelling**; and
 - (i) if an excess **animal permit** is granted, the **poultry house** must be constructed a minimum of 9 metres from any **dwelling**.

SCHEDULE 4 – APPLICATION FOR PERMIT

SCHEDULE 5 – NOTICE TO COMPLY

To: Name:

Address:

.....

You have, in the opinion of the Kingston City Council (**the Council**) or an **Authorised Officer** of the **Council**, committed a breach of clause of the **Council's** Local Law No. 6 by

.....

To remedy the breach you must do the following, within days from the date of this Notice:

.....

.....

.....

.....

You should contact

at the Municipal Office, between

the hours of for any further information about this Notice.

If you fail to comply with this Notice you will be guilty of an offence and liable to a **penalty** of \$500 and the **Council** will carry out any required work, for the cost of which, in addition to the above penalty, you will liable. The amount outstanding, if not paid as required, will be recorded as owing in respect of the **property** and noted on any **land** information certificate which is issued.

Date

Name of **Authorised Officer**:

Telephone no:

Signature of **Authorised Officer**:

Note: If this Notice relates to a contravention of a **permit** and you do not comply with the Notice, the **permit** may be cancelled. If you do not wish to have the **permit** cancelled you should comply with the directions in this Notice or show cause to the Council in writing why the **permit** should not be cancelled.

Council resolved to give notice of its intention to adopt this Local Law on 25 July 2005, and resolved to adopt the Local Law on 24 October 2005.

Notices of the proposal to make and of the making of this Local Law were included in the Victorian Government Gazette dated 15 September 2005 and 3 November 2005. The Public Notice of the proposal to make and confirmation of the making of this Local Law was given in local newspapers on 3 August 2005 and 2 November 2005.

CERTIFICATION OF LOCAL LAW No. 6.

This is to certify the above is a true copy of the Local Law of the Kingston City Council and that the legislative requirements necessary to giving validity to such Local Law have been fulfilled. And we further certify that such Local Law came into force on 3 November 2005.

The Common Seal of the City of Kingston was hereby affixed in the presence of:

Councillor

Chief Executive Officer