

## **PART 3 BEHAVIOUR ON AND USE OF, ROADS, PUBLIC PLACES AND COUNCIL LAND INCLUDING RESERVES**

### ***Division 1 – Obstructions and Behaviour***

#### **26. INTRODUCTION**

This Part contains provisions which aim to regulate behaviour on Roads, in Public Places, on Council Land and on Reserves, including a prohibition on interference with Council Assets and consumption of alcohol in public as well as the regulation of Obstructions to ensure safety and the free movement of pedestrians (including those with a disability).

Division 2 contains provisions regarding the use of Reserves.

#### **27. BEHAVIOUR ON ROADS, PUBLIC PLACES, COUNCIL LAND AND RESERVES**

1. A Person must not on any Road, in any Public Place or on any Council Land or Reserve:
  - a) behave in a manner which is boisterous or harmful, indecent, offensive or abusive or which annoys, disturbs or causes an interruption to the quiet enjoyment by any Person using the area or living in close proximity to the area; or
  - b) behave in a way which is detrimental to property or Council Assets on such Road, Public Place, Council Land or Reserve, including by writing on, drawing on or affixing a sticker or other object to such Property or Council Asset; or
  - c) behave contrary to any Sign that contain conditions applying to the use of the area; or
  - d) behave contrary to any direction of an Authorised Officer.

**Penalty: 2 Penalty Units**

2. For the avoidance of doubt, a Person does not interfere with the quiet enjoyment of other Persons simply by expressing political or other opinions which may cause offence.

#### **28. DISPLAYS, ADVERTISING SIGNS AND OUTDOOR TRADING**

1. A Person must not, without first obtaining a Permit nor otherwise in accordance with the conditions of such Permit:
  - a) display any goods or services on a Road or Road Related Area or in a Public Place; or
  - b) place out any Advertising Sign or other promotional sign on a Road or Road Related Area or in a Public Place; or
  - c) place or allow to be placed out any tables and/or chairs on a Road or Road Related Area or in a Public Place for the purposes of outdoor eating or drinking by customers; or
  - d) place or allow to be placed on a Road or Road Related Area or in a Public Place any seat, umbrella, table, chair, planter box, heater, ash tray or other item associated with trading activities.

**Penalty: 5 Penalty Units**

2. Subclause [28.1.b](#)) does not apply to an Advertising Sign or other promotional sign:
  - a) placed out in accordance with the Planning Scheme or which is an exempt sign or a sign not requiring a permit under the Planning Scheme;
  - b) painted on or permanently fixed to a Vehicle if:
    - i) the existence of the Advertising Sign or other promotional sign is only incidental to and not the primary reason why the Vehicle is on the Road or Road Related Area or in the Public Place; and
    - ii) the Advertising Sign or other promotional sign remains on that Vehicle even when not on that Road or Road Related Area or in that Public Place; or
  - c) placed out with the consent of a Public Body having the care, management and control of the Road, Road Related Area or Public Place.
3. For the purposes of subclause [28.1](#), a permit issued by Council for a temporary food stall under the provisions of the *Food Act* 1984 will be deemed to be a Permit.
4. For the purposes of subclause [28.1](#), Council may declare, by resolution, Property that is privately owned but being used for a public purpose as a Public Place.
5. Any privately owned Property declared as a Public Place under subclause [28.4](#) must be:
  - a) advertised in a newspaper generally circulated within the Municipal District; and
  - b) advised to the Owner of the Property as shown on Council's rates records at the time of the declaration.

**29. PROTRUDING OBJECTS**

A Person must not plant, locate or allow to be located a tree, Plant, sign, hoarding, flag, banner or bunting or other similar object in a way that it is obstructing or interfering with pedestrian or vehicular traffic by:

- a) overhanging any Footpath or other part of the Road used by pedestrians to any extent up to a height of 2.1 metres or so that it gets in the way of pedestrians or is likely to cause injury or damage; or
- b) extending over any part of the Road in such a way that it:
  - i) obstructs the view between drivers of Vehicles at an intersection; or
  - ii) obstructs the view between drivers of Vehicles and pedestrians; or
  - iii) obstructs any Council Asset, including a drain; or
  - iv) obscures a traffic control item from the driver of an approaching Vehicle or a pedestrian; or
  - v) obscures street lighting; or

- vi) constitutes a danger to Vehicles or pedestrians or compromises the safe and convenient use of the Road.

**Penalty: 5 Penalty Units**

### 30. GENERAL OBSTRUCTIONS

- 1. A Person must not, without first obtaining a Permit nor otherwise in accordance with the conditions of such Permit, cause, or allow to continue, any Obstruction on a Road or Footpath, in a Public Place or on Council Land or a Reserve.

**Penalty: 5 Penalty Units**

- 2. Nothing in sub clause [30.1](#) extends to any Person:
  - a) who holds or operates under a Permit issued with the authority of an Act or this Local Law; or
  - b) where the Person has obtained Council's permission pursuant to the Nature strip Guidelines Booklet available on Council's website; or
  - c) to whom section 4(e) of the *Summary Offences Act 1966* applies.
- 3. If an Authorised Officer finds a Person contravening subclause [30.1](#), Council or that Authorised Officer may
  - a) remove the item or Obstruction; or
  - b) cause the item or Obstruction to be removed.
- 4. Any expenses incurred by Council in exercising the power conferred by subclause [30.3](#) will be a debt due and payable to Council by the Person contravening subclause [38.1](#).

### 31. SHOPPING TROLLEYS

- 1. Except where a Person (being the Owner or Occupier of Retail Premises) has 25 Shopping Trolleys or less, a Person must not make a Shopping Trolley available for use, or allow it to be used, unless the Shopping Trolley has either:
  - a) a coin operated mechanism attached to it; or
  - b) the Person has an agreed 12 month renewable management plan in place with Council for the effective control and retrieval of Shopping Trolleys.

**Penalty: 2 Penalty Units**

- 2. The Person referred to in subclause [31.1](#) must ensure that it has a sign on each Shopping Trolley that legibly identifies his or her name or the trading name of the business to which it belongs and a current contact telephone number.

**Penalty: 2 Penalty Units**

- 3. The Person referred to in subclause [31.1](#) who provides a Shopping Trolley must ensure that the Shopping Trolley is not left on any Road, in any Public Place or on any Council Land unless it is left on land provided or set aside by Council as an area for that purpose.

**Penalty: 2 Penalty Units**

- 4. A Shopping Trolley found on a Road, in a Public Place or on Council Land which is not the Property on which it is usually kept may be removed and impounded by an Authorised Officer in accordance with clause [109](#).

5. Upon notification that a Shopping Trolley has been impounded, a Shopping Trolley may be claimed by the Person referred to in subclause [31.1](#) after the impounding fees have been paid in full in accordance with clause [109](#).
6. Any Person referred to in subclause [31.1](#) who does not claim an impounded Shopping Trolley within the time specified by Council for collection in any notice given to that Person is guilty of an offence.

**Penalty: 2 Penalty Units**

7. A Person must not use a Shopping Trolley for any purpose other than for the purpose for which the Shopping Trolley has been specifically designed.

**Penalty: 2 Penalty Units**

### **32. CONSUMPTION AND POSSESSION OF LIQUOR**

1. A Person must not, on any Road, in any Public Place or on any Council Land:
  - a) consume any Liquor; or
  - b) be in possession or control of any Liquor other than in a sealed container or receptacle

except in such place as may for the time being be:

- i) licensed premises within the meaning of the *Liquor Control Reform Act 1998*; or
- ii) an area in which the consumption of Liquor is permitted in accordance with a permit or licence granted under the *Liquor Control Reform Act 1998*; or
- iii) an area in respect of which Council has issued a Permit or licence for the consumption of the Liquor; or
- iv) within an area designated by resolution of Council as an area to which the prohibition in this subclause [32.1](#) does not apply.

**Penalty: 5 Penalty Units**

2. Where an Authorised Officer believes on reasonable grounds that a Person is contravening or has contravened subclause [32.1](#), the Authorised Officer may direct the Person to seal any container or dispose of the contents of any unsealed container.
3. A Person to whom a direction is given under subclause [32.2](#) must comply with that direction.

**Penalty: 5 Penalty units**

4. Any area designed by resolution as an area to which the prohibition in subclause [32.1](#) does not apply must be specified on Council's website.

### **33. NO SMOKING IN SMOKE FREE AREAS**

1. A Person must not Smoke a Tobacco Product in a Smoke Free Area.

**Penalty: 5 Penalty units**

2. Where an Authorised Officer believes on reasonable grounds that a Person is contravening or has contravened subclause [33.1](#), the Authorised Officer may direct the Person to extinguish and then dispose of the Tobacco Product.

3. A Person to whom a direction is given under subclause [33.2](#) must comply with that direction.

**Penalty: 5 Penalty units**

4. Council may designate any area within the Municipal District to be a Smoke Free Area.
5. When determining whether to designate an area as a Smoke Free Area, Council must have regard to the following factors:
  - a) the size of the proposed Smoke Free Area; and
  - b) the opinions of any Person who is the Owner or Occupier of any part of the proposed Smoke Free Area; and
  - c) the proximity of the proposed Smoke Free Area to a Public Place; and
  - d) the extent and outcome of any public consultation on the proposed Smoke Free Area; and
  - e) any benefits to the community which would be achieved by Council designating the proposed Smoke Free Area; and
  - f) any detriment to the community which would be caused by Council designating the proposed Smoke Free Area; and
  - g) any other matter which Council considers relevant.
6. Council or an Authorised Officer must erect, or cause to be erected, a 'No Smoking' sign in every designated Smoke Free Area.

**34. NOISE FROM VEHICLE SOUND EQUIPMENT**

1. A driver or Owner or Person in control of a Vehicle which is:
  - a) parked on; or
  - b) stopped on; or
  - c) being driven alonga Road or Council Land or Public Place is guilty of an offence if the volume of any sound equipment installed or kept in the Vehicle reaches a level which causes unreasonable noise or which interferes with the reasonable comfort of Persons within the proximity of the Vehicle.

**Penalty: 5 Penalty units**

2. Without limiting the generality of subclause [34.1](#), sound equipment will be deemed to be causing unreasonable noise or interfering with the reasonable comfort of Persons within the proximity of the Vehicle if it can be heard above the prevailing noise at a distance of 10 metres from the Vehicle.

**35. INTERFERENCE WITH COUNCIL ASSETS**

A Person must not interfere with or use Council Assets in such a way that:

- a) damage or detriment is caused to a Council Asset; or
- b) any other Person is injured or suffers loss as a result of that interference or use.

**Penalty: 10 penalty units**

**36. INTERFERENCE FROM ADJOINING PROPERTY**

An Owner or Occupier of Property must not allow any tree or Plant on that Property to cause damage to or interfere with a Road or Council Land or Council Asset, including any drain vested in or under the control of Council.

**Penalty: 2 Penalty Units**

**37. REPAIRING ANY DAMAGE**

1. An Authorised Officer may direct a Person who has damaged or interfered with Council Assets contrary to clause [35](#) or [36](#) to repair any damage.
2. A Person to whom a direction is given under subclause [37.1](#) must comply with that direction.

**Penalty: 4 Penalty Units**

**38. COUNCIL ASSET PROTECTION PERMIT – BUILDING WORKS**

1. In addition to a Building Permit, a Person must obtain a non transferable Asset Protection Permit to carry out or allow to be carried out Building Works on a Property.

**Penalty: 20 penalty units**

2. Without limiting Council's powers under Part 8 of this Local Law, an Asset Protection Permit may be subject to such conditions as Council determines, including conditions:
  - a) acknowledging any existing damage; or
  - b) requiring protection works to be done; or
  - c) requiring the payment of an Asset Protection Fee; or
  - d) requiring the erection of temporary fencing to the satisfaction of Council; or
  - e) requiring that any or all Council Assets or infrastructure damage be repaired, replaced or re-instated within a specified time; or
  - f) requiring a temporary Vehicle Crossing to be installed to Council's specification before commencement of any Building Works or delivery of any equipment or materials to the Property.
3. Within seven days after being issued with a Building Permit, the holder of the Building Permit must give notice to Council of what, if any, damage already exists to any Footpath, kerb and channel, nature strip, street or reserve furniture, tree, plant, drain and Vehicle Crossing which is:
  - a) adjacent to the Property to which the Building Permit relates; or
  - b) likely to be affected by the Building Works authorised by the Building Permit.
4. Council must, as soon as is reasonably practicable after receiving such notice, acknowledge any pre-existing damage.
5. If the holder of the Building Permit does not give notice to Council in accordance with subclause [38.3](#), or if Council does not acknowledge the pre-existing damage, it is deemed, for the purposes of this clause [38](#), that there was no pre-existing damage.

6. Council must, as soon as is reasonably practicable after receiving notice of the issue of an occupancy permit or certificate of final inspection referable to the Building to which the Asset Protection Permit relates, cause an inspection to be carried out of each Footpath, kerb and channel, nature strip, street or reserve furniture, tree, plant, drain or Vehicle Crossing which is:
  - a) adjacent to the Property to which the Building Permit relates; or
  - b) likely to be affected by the Building Works authorised by the Building Permit.
7. If the Building Works authorised by the Building Permit have caused damage to any Footpath, kerb and channel, nature strip, street or reserve furniture, tree, plant, drain and Vehicle Crossing which is:
  - a) adjacent to the Property to which the Building Permit relates; or
  - b) likely to be affected by the Building Works authorised by the Building Permit

an Authorised Officer may serve on the holder of the Building Permit or the Owner of the land to which the Building Permit relates a notice to comply requiring that person to repair or cause to be repaired the Footpath, kerb and channel, nature strip, street or reserve furniture, tree, plant, drain or Vehicle Crossing (as the case may be) within 28 days after the notice is given.

8. Upon receiving any such notice to comply, the Owner or Occupier must carry out the works required therein within the time allowed.
9. A notice to comply served under this clause [38](#) may require the Owner or Occupier to carry out any work required to remedy anything that constitutes a contravention of this clause [38](#).
10. Failure to comply with a notice to comply is a contravention of the Local Law.

**Penalty: 20 Penalty Units**

11. An Owner or Occupier on whom a notice to comply has been served may, in accordance with Part 8, lodge an objection with the Authorised Officer who issued the notice within 7 days of the service of the notice to comply.

## **Division 2 - Reserves**

### **39. INTRODUCTION**

The purpose of this Division is to regulate the use of Reserves.

Behaviour generally within Reserves is regulated by clause [27](#) and any other relevant clauses in this Local Law.

### **40. ACCESS**

1. Council may, by resolution:
  - a) set aside days on, and times at which, members of the public cannot use or enter a Reserve; or
  - b) fix charges or entrance fees which members of the public must pay before using or entering a Reserve.
2. A Person must not, without the authority of Council, use or enter a Reserve on a day, or at a time, when members of the public are prohibited from using or entering the Reserve.

**Penalty: 10 Penalty Units**

3. A Person must not, without the authority of Council, use or enter a Reserve without paying the charge or entrance fee fixed by Council.

**Penalty: 2 Penalty Units**

**41. COUNCIL MAY GRANT LEASES AND LICENCES**

1. Council may grant to any Person a lease or licence to occupy or use a Reserve for the purposes of conducting a competitive game or sport or recreational activity.
2. Any lease or licence granted by Council is subject to such terms as Council thinks fit.
3. If there is any difference or conflict between the express provisions of any lease or licence and this Local Law, the provisions of such lease or licence will apply.
4. During the period of occupation or use by a lessee or licensee, a Person must not, without the authority of Council:
  - a) enter; or
  - b) or remain within or uponthe Reserve without the consent of the lessee or licensee.

**Penalty: 5 Penalty Units**

**42. USE OF RESERVES**

A Person must not, without first obtaining a Permit and observing the conditions of such Permit or in accordance with any lease or licence, within a Reserve:

- a)
  - i) camp; or
  - ii) pitch, erect or occupy any camp, tent, temporary shelter, Caravan, trailer or Vehicle used as a mobile home; or
- b) hold any circus, carnival or fair, wedding, rally, demonstration or other public gathering; or
- c) erect, fix or place any Advertising Sign; or
- d) conduct, organize or participate in any competitive game or sport; or
- e) engage in, play or practise football, soccer, cricket, bowls, tennis, lacrosse, archery or any like game or throw any javelin, shot putt, hammer or boomerang in or upon the Reserve if this is interfering with the quiet enjoyment of the Reserve by any other Person or Persons; or
- f) Sell any food, drink or other article or possess any food, drink or other article with the intention of Selling it or exposing or offering it for sale; or
- g) make a collection of money; or
- h) permit an Animal owned by him or her or of which he or she is in charge unless, in the case of a Dog, such Dog is controlled by leash, chain or cord not exceeding 1.8 metres in length; or
- i) control any radio controlled model or vehicle; or
- j) ride or drive any horse, Vehicle or Skateboard:



- i) unless, in the case of parking a Vehicle, he or she parks in an area designated for that purpose or, being an area other than a Playing Arena, does not interfere with the quiet enjoyment of the Reserve by any other Person or Persons; or
- ii) unless, in the case of the riding of a bicycle or Skateboard, the bicycle or Skateboard is ridden so as to not interfere with the quiet enjoyment of the Reserve by any other Person or Persons; or
- iii) except by a member of Council staff or the Victoria Police acting in the course of his or her employment; or
- iv) except upon any designated roadway or, in the case of bicycles, a bicycle pathway in circumstances in which no damage is caused to such Reserve; or
- k) deliver an address or engage in any form of entertainment; or
- l) conduct a promotion or display any promotional material; or
- m) play or practise golf (except in the Melton Valley Golf Course or the golf practice area located in McPherson Park, Coburns Road); or
- n) allow vehicular access to adjoining Property for the purposes of Building Works or any other activity (for example, use of a crane); or
- o) remain in or upon the Reserve after having been lawfully directed to leave by an Authorised Officer or a member of the Victoria Police, regardless of any entrance fee paid.

**Penalty: 5 Penalty Units**

#### 43. ADJOINING PROPERTIES GENERALLY

1. The Owner or Occupier of a Property abutting a Reserve must not, without first obtaining a Permit nor otherwise than in accordance with the conditions of such Permit:
  - a) install:
    - i) a gateway which services; or
    - ii) other means of access to or from the Reserve; or
  - b) propagate any tree, shrub, flower or Plant within the Reserve; or
  - c) erect or install any structure, equipment or Barbecue within the Reserve.

**Penalty: 10 Penalty Units**

2. Without limiting Council's powers under Part 8 of this Local Law, in determining whether to grant a Permit under this clause [43](#) the matters to which Council may have regard include:
  - a) the use or likely use to which the gateway or other means of access will be put; and
  - b) the existing means of access to and from the Reserve; and
  - c) the tree, shrub, flower or Plant which it is proposed to propagate; and
  - d) the structure, equipment or Barbecue which it is proposed to erect or install; and

- e) whether the application is prepared to forgo any claim to an easement or title acquired by adverse possession; and
- f) whether the application complies with any policy adopted by Council.

**44. LAWFUL DIRECTION TO LEAVE**

If an Authorised Officer reasonably suspects that a Person is contravening this Division, he or she may request the Person to leave the Reserve, notwithstanding that the Person has paid a fee or charge for admission.