

Ipswich

City Council

Local Law No. 3

(Commercial Licensing) 2013

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Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No.3 (Commercial Licensing) 2013*.

1A Commencement

This local law commences on 1 August 2013

2 Objects

The objects of this local law are to ensure that—

- (a) a licence regulated activity¹ does not result in—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; and
- (b) the operation of a licence regulated activity complies with the Local Government Acts that regulate the licence regulated activity by subjecting the licence regulated activity to an inspection, monitoring and enforcement regime.

3 Definitions—the Dictionary

- (1) The dictionary in the Schedule (Dictionary) of this local law defines particular words used in this local law.
- (2) The dictionary in *Local Law No. 1 (Administration) 2013* also defines words used in this local law

4 Relationship to other laws

- (1) This local law does not apply to—
 - (a) the operation of a licence regulated activity on a State-controlled road if licensing of the activity is prohibited by Chapter 6 (Road Transport Infrastructure) of the *Transport Infrastructure Act 1994*; or

¹ licence regulated activities are set out in schedule 2.

- (b) the operation of a licence regulated activity which is —
- (i) authorised; or
 - (ii) required to be operated in the performance of an express duty or power,
- under legislation (including subordinate legislation); or

Example—

If incineration was a licence regulated activity this section would exempt officers of the Queensland Fire and Rescue Service and other authorised persons from being licensed as they have the power to light fires under the *Fire and Rescue Service Act 1990*.

- (c) a person operating a licence regulated activity where that person is required to be licensed, registered or approved in respect of the operation of that licence regulated activity pursuant to—
- (i) the *Environmental Protection Act 1994*; or
 - (ii) the *Residential Services (Accreditation) Act 2002*; or
 - (iii) the *Public Health (Infection Control for Personal Appearance Services) Act 2003*; or
 - (iv) the *Child Protection Act 1999*; or
 - (v) the *Disability Services Act 2006*.

Example of paragraph (c)—

This would exempt the operation of a licence regulated activity that is registered by the State government under the *Environmental Protection Act 1994*.

- (2) The powers given by this local law must be exercised in a way that is not inconsistent with all Acts (including subordinate legislation) including—
- (a) the *Environmental Protection Act 1994*; and
 - (b) the *Fire and Rescue Service Act 1990*; and
 - (c) the *Land Protection (Pest and Stock Route Management) Act 2002*; and
 - (d) the *Transport Operations (Roads Use Management) Act 1995*; and
 - (e) the *Land Act 1994*; and

- (f) the *Plumbing and Drainage Act 2002*; and
- (g) the *Building Act 1975*; and
- (h) the *Sustainable Planning Act 2009*; and
- (i) the *Residential Services (Accreditation) Act 2002*; and
- (j) the *Food Act 2006*; and
- (k) the *Work Health and Safety Act 2011*; and
- (l) the *Coroners Act 2003*; and
- (m) the *Transport Infrastructure Act 1994*; and
- (n) the *Food Production (Safety) Act 2000*; and
- (o) the *Retirement Villages Act 1999*; and
- (p) the *Public Health Act 2005*; and
- (q) the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Part 2 Licensing

5 Requirement for a licence

- (1) A person must not—
 - (a) operate a licence regulated activity² on premises within the local government area unless authorised by a licence granted under section 7(2) (Deciding application for a licence) of this local law; or
 - (b) change the manner of operation of a licence regulated activity on premises within the local government area unless authorised by a licence granted under section 7(2) (Deciding application for a licence) of this local law.

Maximum penalty for subsection (1)—50 penalty units.

- (2) A person must not—

² For definitions of *licence regulated activity* and *operating a licensed regulated activity* see Schedule 1 (Dictionary) and for specific licence regulated activities see Schedule 2, (Licence regulated activities).

- (a) exhibit a sign which indicates that a licence regulated activity which does not comply with this local law does comply with this local law; or
- (b) in any manner or by any means indicate that a licence regulated activity which does not comply with this local law does comply with this local law.

Maximum penalty for subsection (2)—50 penalty units.

- (3) Despite section 5(1) (Requirement for a licence) of this local law, a subordinate local law may specify that a licence is not required under this local law in respect of the operation of the licence regulated activity (an ***exempt licence regulated activity***).
- (4) The local government may, by subordinate local law, prescribe minimum standards that must be complied with in carrying out a licence regulated activity.
- (5) The local government may, by subordinate local law, require that a licence regulated activity or an exempt licence regulated activity cannot be carried out unless—
 - (a) minimum standards for the regulated activity prescribed in a subordinate local law are complied with; or
 - (b) if minimum standards cannot be complied with, the written approval of the local government has been obtained.
- (6) If the local government prescribes minimum standards for the conduct of a licence regulated activity or exempt licence regulated activity, a person must not—
 - (a) operate the licence regulated activity or exempt licence regulated activity (as the case may be) on premises within the local government area unless—
 - (i) the relevant minimum standards are complied with; or
 - (ii) the person has obtained the written approval of the local government under section 5(5)(b) (Requirement for a licence), or

- (b) change the manner of operation of a licence regulated activity on premises within the local government area unless—
 - (i) minimum standards are complied with; or
 - (ii) the person has obtained the written approval of the local government under section 5(5)(b) (Requirement for a licence).

Maximum penalty for subsection (6)—50 penalty units.

6 Application for a licence

- (1) An application for a licence must be—
 - (a) made by the person who will be operating the licence regulated activity; and
 - (b) made in the prescribed form; and
 - (c) accompanied by—
 - (i) the name, contact telephone number and postal address of the applicant; and
 - (ii) the prescribed fee; and
 - (iii) evidence or confirmation that all approvals under a Local Government Act required for the operation of the licence regulated activity have been obtained; and
 - (iv) full details of the licence regulated activity; and
 - (v) such other information and materials specified in a subordinate local law.
- (2) If an applicant for a licence is not the owner of the premises on which the licence regulated activity is to be operated, the application must be accompanied by the written consent of the owner. This requirement does not apply if the premises is under local government control.
- (3) The local government is not required to consider an application which is—
 - (a) not made in the prescribed form; or
 - (b) not accompanied by the documents, materials or fee required in section 6(1) (Application for licence).

- (4) The local government may, by written notice, request that the applicant provide further information or clarify any information reasonably required for the local government to assess the application.
- (5) If the applicant does not, without reasonable excuse, provide the further information within 10 business days of the request in section 6(4) (Application for licence), then the local government may refuse the application.
- (6) The local government may waive the requirements of section 6 (Application for a licence) of this local law—
 - (a) in an emergency; or
 - (b) if there are special reasons for dispensing with the requirements; or
 - (c) in the circumstances specified in a subordinate local law.

7 Deciding application for a licence

- (1) The local government must—
 - (a) consider an application for a licence; and
 - (b) subject to section 7(2) (Deciding application for a licence) of this local law, decide whether to grant or refuse the application.
- (2) In deciding an application the local government may have regard to—
 - (a) the likelihood of the activity causing nuisance, inconvenience or annoyance to the occupiers of adjoining premises or the community;
 - (b) the likely effect of the activity on the amenity of the surrounding area;
 - (c) the likely effect of the activity on the local environment or any environmental harm or nuisance caused or contributed to by the activity;
 - (d) the likely effect of the activity on public health, safety and amenity;
 - (e) the physical suitability of the land for the proposed use;
 - (f) whether any improvements or structures associated with the activity and proposed to be constructed on land, are structurally sound and consistent with surrounding buildings and the environment;

- (g) whether the applicant holds any other current approvals or licences required to conduct the activity under another law; and
 - (h) whether the applicant complies with the provisions of a Local Government Act that regulate the operation of the licence regulated activity; and
 - (i) whether the activity complies with the assessment criteria³; and
 - (j) whether the activity complies with the minimum standards; and
 - (k) any other matters which the local government considers relevant to deciding the application.
- (3) Before the local government decides an application for a licence, an authorised person may—
- (a) inspect any premises⁴, vehicle, equipment, animal, plant or thing to be involved in the operation of the licence regulated activity; and
 - (b) measure, weigh, sample, test, photograph, videotape or otherwise examine anything that may be inspected.
- (4) For the purposes of determining whether the matters specified in section 7(2) (Deciding application for a licence) of this local law have been satisfied the local government may have regard to the results of any periodic inspection, testing or monitoring program undertaken in respect of the operation of the licence regulated activity.

8 Term of a licence

- (1) A licence granted by the local government is for a term extending from the date of issue until the thirtieth day of the following June unless otherwise specified in the licence or a subordinate local law.
- (2) A licence expires at the end of the day specified in section 8(1) (Term of a licence) of this local law.

9 Conditions of a licence

- (1) A licence may be granted by the local government on conditions the local government considers appropriate.

³ See definition of *assessment criteria*, the Schedule (Dictionary)

⁴ Entry to property for the purpose of assessing an application is subject to section 132 of the *Local Government Act 2009*.

- (2) The conditions of a licence may—
- (a) require the holder of the licence to take specified measures to—
 - (i) prevent harm to human health or safety or personal injury; and
 - (ii) prevent property damage or a loss of amenity; and
 - (iii) prevent environmental harm or environmental nuisance; and
 - (iv) prevent a nuisance; and
 - (v) ensure that there is compliance with the provisions of a Local Government Act that regulate the undertaking of the licence regulated activity; and
 - (vi) ensure that the licence regulated activity complies with the minimum standards; and
 - (b) require compliance with specified safety requirements; and
 - (c) require the holder of the licence to carry out specified work; and
 - (d) regulate the time within which the licence regulated activity must be carried out; and
 - (e) specify standards with which the licence regulated activity must comply; and
 - (f) require the holder of the licence to give the local government specified indemnities and to take out specified insurance; and
 - (g) require the holder of the licence to take out specified insurance indemnifying persons who may suffer personal injury, or loss or damage, as a result of the licence regulated activity; and
 - (h) require the holder of the licence to exhibit specified warning notices and to take other specified precautions; and
 - (i) require the holder of the licence to notify the local government within a period specified in the licence that the holder of the licence is (as the case may be) –
 - (i) no longer undertaking the licence regulated activity; or

- (ii) undertaking the licence regulated activity other than in accordance with the licence; and
 - (j) require the certification by a person specified by the local government of a vehicle, equipment or thing involved in the licence regulated activity; and
 - (k) require the giving of a security to secure compliance with the licence and the provisions of this local law; and
 - (l) require records to be kept at a place and for a time specified in the licence or a subordinate local law; and
 - (m) require the holder of the licence to prepare, provide, undertake or comply with a periodic inspection, monitoring or management program in respect of the licence regulated activity.
- (3) The local government may specify in a subordinate local law, the conditions that must be imposed in a licence or that will ordinarily be imposed in a licence for a licence regulated activity.

10 Power to change the conditions of a licence

- (1) The local government may change a condition of a licence where⁵—
- (a) the holder of the licence agrees to the proposed change; or
 - (b) the change is urgently necessary to prevent—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (c) the change is necessary to ensure that the operation of the licence regulated activity complies with the minimum standards.
- (2) If the local government is satisfied it is necessary to change a condition of a licence under section 10(1)(b) or 10(1)(c), the local government must—

⁵ A change to the conditions of a licence includes a change by omission, substitution or addition (see section 36 (Meaning of commonly used words and expressions) of the *Acts Interpretation Act 1954*).

- (a) give the holder of the licence a written notice stating—
 - (i) the proposed change and the reasons for the change; and
 - (ii) that the holder of the licence may make written representations to the local government about the proposed change; and
 - (iii) the time (at least 15 business days after the notice is given to the holder of the licence) within which the written representations may be made; and
 - (b) consider any written representation made by the holder of the licence within the time stated in the notice.
- (3) After considering any written representation made by the holder of the licence, the local government must give to the holder of the licence—
- (a) if the local government is not satisfied the change is necessary – a written notice stating that it has decided not to change the condition; or
 - (b) if the local government is satisfied that the change is necessary – a written notice stating that it has decided to change the condition including details of the changed condition.
- (4) The changed condition takes effect from the day the written notice was given to the holder of the licence.

11 Amendment, renewal or transfer of a licence

- (1) The holder of a licence may make application to the local government to—
- (a) amend the licence; or
 - (b) renew the licence; or
 - (c) transfer the licence to another person.
- (2) An application to amend, renew or transfer a licence must be—
- (a) made by the holder of the licence; and
 - (b) made in the prescribed form; and

- (c) accompanied by the prescribed fee and such other information as is requested by the local government; and
 - (d) accompanied by, in the case of a transfer of the licence—
 - (i) the written consent of the person to whom the licence will be transferred; and
 - (ii) the written consent of the owner of the premises on which the licence regulated activity is or is to be operated.
- (3) The local government may renew or transfer a licence—
- (a) where the operation of the licence regulated activity complies with the conditions of the licence and the provisions of this local law; and
 - (b) subject to such conditions the local government considers appropriate.
- (4) The local government may amend a licence subject to such conditions the local government considers appropriate having regard to the matters specified in section 7(2) (Deciding application for a licence) of this local law.
- (5) Subject to section 11(6) (Amendment, renewal or transfer of a licence) of this local law, if an application to renew a licence is made pursuant to section 11(1)(b) (Amendment, renewal or transfer of a licence) of this local law, the licence is taken to continue in force from the day that it would, apart from this section, have expired until the day the application is decided pursuant to section 11(3) (Amendment, renewal or transfer of a licence) of this local law.
- (6) Section 11(5) (Amendment, renewal or transfer of a licence) of this local law does not apply where a licence has been cancelled pursuant to section 12 (Cancellation of a licence) of this local law.

12 Cancellation or suspension of a licence

- (1) The local government may cancel or suspend a licence where—
- (a) the holder of the licence agrees to the cancellation or suspension; or
 - (b) the cancellation or suspension is urgently necessary to prevent—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or

- (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (c) the holder of the licence contravenes—
 - (i) this local law; or
 - (ii) a condition of a licence; or
 - (iii) a requirement of a compliance notice; or
 - (d) the operation of the licence regulated activity does not comply with—
 - (i) the provisions of a Local Government Act that regulate the operation of the licence regulated activity; or
 - (ii) the minimum standards; or
 - (e) the licence was granted on the basis of false, misleading or incomplete information; or
 - (f) changes in circumstances, as specified by a subordinate local law, since the licence was granted make the continued operation of the licence inappropriate.
- (2) If the local government is satisfied it is necessary to cancel or suspend a licence, other than with the agreement of the holder of the licence under section 12(1)(a), the local government must—
 - (a) give the holder of the licence a written notice (a show cause notice) stating—
 - (i) the reasons for the proposed cancellation or suspension; and
 - (ii) that the holder of the licence may make written representations to the local government about the proposed cancellation or suspension; and
 - (iii) the time (at least 10 business days after the notice is given to the holder of the licence) within which written representations may be made; and
 - (b) consider any written representations made by the holder of the licence within the time stated in the notice.

- (3) After considering any written representation made by the holder of the licence the local government must give to the holder of the licence—
 - (a) if the local government is not satisfied that the cancellation or suspension is necessary – a written notice stating it has decided not to cancel the licence; or
 - (b) if the local government is satisfied that the cancellation or suspension is necessary – a written notice stating it has decided to cancel the licence.
- (4) Before the local government cancels or suspends a licence under section 12(3) (Cancellation or suspension of a licence) of this local law, the local government must consider the impact of the cancellation or suspension of the licence on those persons who would be effected by the licence regulated activity ceasing to be operated.
- (5) The cancellation or suspension of the licence takes effect from the day the written notice was given to the holder of the licence.
- (6) Where the local government has cancelled or suspended a licence, the holder of the licence must cease to operate the licence regulated activity.

Maximum penalty for subsection (6)—50 penalty units.

13 General compliance provision

- (1) The holder of a licence must ensure that the conditions of the licence are complied with.

Maximum penalty for subsection (1) –

 - (a) for first offence – 20 penalty units.
 - (b) for second offence in a 2 year period – 30 penalty units.
 - (c) for third or further offences in a 2 year period – 50 penalty units.
- (2) The holder of a licence and any person acting under the licence, must ensure that the operation of the licence regulated activity—
 - (a) does not result in harm to human health or safety or personal injury; and
 - (b) does not result in property damage or a loss of amenity; and

- (c) does not result in environmental harm or environmental nuisance;
and
- (d) does not result in a nuisance; and
- (e) complies with the minimum standards.

Maximum penalty for subsection (2)—

- (f) for first offence – 20 penalty units.
 - (g) for second offence in a 2 year period – 30 penalty units.
 - (h) for third or further offences in a 2 year period – 50 penalty units.
- (3) A person must not operate or change the manner of operation of an exempt licence regulated activity within the local government area unless the activity complies with the relevant minimum standards.

Maximum penalty for subsection (3) –

- (a) for first offence– 20 penalty units.
- (b) for second offence in a 2 year period – 30 penalty units.
- (c) for third or further offences in a 2 year period – 50 penalty units.

Part 3 Enforcement

14 Compliance notice

- (1) The local government may give a compliance notice to—
 - (a) a person who contravenes this local law; and
 - (b) any person involved in the contravention of this local law pursuant to section 21 (Liability of third parties) of this local law; and
 - (c) the owner or occupier of the premises on which the licence regulated activity is operated.
- (2) A compliance notice may require the person to whom it is given to—

- (a) stop the contravention, if the contravention is of a continuing or recurrent nature; and
 - (b) perform work or otherwise take specified action to remedy the contravention (including the making of an application for a licence) for or within a time specified in the compliance notice, whether or not the contravention is of a continuing or recurrent nature; and
 - (c) perform work or otherwise take specified action for or within a time specified in the compliance notice to ensure compliance with the criteria specified in section 13 (General compliance provision) of this local law.
- (3) A person to whom the compliance notice is given must comply with the compliance notice.

Maximum penalty for subsection (3)—50 penalty units.

15 Procedure for immediate suspension of licence

- (1) Despite section 12 (Cancellation or suspension of licence), the local government may immediately suspend a licence if the local government believes that continuation of the licensed activity by the licenced holder poses—
- (a) an urgent and serious threat to public health or safety;
 - (b) or an urgent and serious risk of environmental harm, property damage or loss of amenity.
- (2) The suspension—
- (a) can be effected only by the local government giving a notice to the licence holder about the decision to immediately suspend the approval, together with a show cause notice about proposed action under section 12(2) (Cancellation or suspension of licence); and
 - (b) operates immediately the notices are given to the approval holder; and
 - (c) continues to operate until the earliest of the following happens—
 - (i) the local government cancels the suspension;

- (ii) the local government gives the licence holder notice under section 12(3) (Cancellation or suspension of licence) of its decision about the show cause notice;
- (iii) 10 business days have passed since the expiry of the stated time for the making of written submissions regarding the show cause notice;
- (iv) 10 business days have passed since the approval holder notifies the local government that it has made its final written submissions regarding the show cause notice.

16 Inspection of a licence regulated activity

- (1) An authorised person may inspect⁶ the operation of a licence regulated activity and any premises, vehicle, equipment, animal, plant or thing involved in the operation of the licence regulated activity to establish whether there is compliance with—
 - (a) the requirements of this local law; and
 - (b) the minimum standards; and
 - (c) the conditions of the licence; and
 - (d) the requirements of a compliance notice; and
- (2) An authorised person may direct⁷ the person operating the licence regulated activity to produce for inspection—
 - (a) the licence granted by the local government; and
 - (b) any records that are required to be kept as a condition of the licence, or as a requirement of the minimum standards or as specified in a subordinate local law, and may take copies of or extracts from those records; and
 - (c) any vehicle, equipment, animal, plant or thing involved in the operation of the licence regulated activity; and
 - (d) any inspection, monitoring or management programs required to be kept as a condition of the licence or as a requirement of the minimum standards or as specified in a subordinate local law.

⁶ See the powers contained in Chapter 5, Part 2, Division 1 of the Act

⁷ See the powers contained in Chapter 5, Part 2, Division 1 of the Act

- (3) An authorised person may measure, weigh, sample, test, photograph, videotape or otherwise examine anything that may be inspected pursuant to section 16 (Inspection of a licence regulated activity) of this local law.⁸
- (4) The person operating the licence regulated activity must comply with—
 - (a) a direction of an authorised person pursuant to section 16(2) (Inspection of a licence regulated activity) of this local law; and
 - (b) the terms of a periodic inspection, monitoring or management program in respect of the operation of the licence regulated activity specified in a subordinate local law.

Maximum penalty for subsection (4)—50 penalty units.

17 Performance of work

- (1) A person who commits an offence under this local law must make good any damage caused directly or indirectly by the commission of the offence.
- (2) The local government may perform the work where a person has failed to perform the work required to be performed by a compliance notice issued under this local law.
- (3) The local government must dispose of any material of any nature removed by it pursuant to section 17(2) (Performance of work) of this local law in accordance with section 40 (Confiscated goods), *Local Law No. 1 (Administration) 2013*.
- (4) An authorised person may perform the work that the local government is empowered to undertake pursuant to section 17 (Performance of work) of this local law.
- (5) The Court may order a person found guilty of an offence under this local law to—
 - (a) perform work required to be performed by—
 - (i) section 17(1) (Performance of work) of this local law; or
 - (ii) a compliance notice issued under this local law; or
 - (iii) a condition of a licence; or
 - (iv) a provision of this local law; or

⁸ See the powers contained in Chapter 5, Part 2, Division 1 of the Act

- (b) pay to the local government all costs incurred by the local government in performing the work pursuant to section 17 (Performance of work) of this local law.

18 Power of entry and cost recovery

- (1) If work to be carried out by the local government under section 17 (Performance of work) is on land of which the local government is not the owner or occupier, the local government may enter the land to perform the work⁹—
 - (a) if the person who has failed to perform the work is the owner or occupier of the land; or
 - (b) if the entry is necessary for the exercise of the local government's jurisdiction.
- (2) If the person who failed to perform the work is the owner of the land, the amount properly and reasonably incurred by the local government to perform the work is recoverable (together with any interest) under Chapter 5, Part 2, Division 2 of the Act.
- (3) If the person who failed to perform the work is not the owner of the land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default together with interest on the same basis as applies to an owner of the land under Chapter 5, Part 2, Division 2 of the Act.

Part 4 Administrative provisions

19 Executive officers must ensure the corporation complies with the local law

- (1) The executive officers of a corporation must ensure the corporation complies with this local law.
- (2) If a corporation commits an offence against a provision of this local law, each of the corporation's executive officers also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the relevant provision by an individual.

⁹ See the powers contained in Chapter 5, Part 2, Division 2 of the Act

- (3) Evidence that the corporation has been convicted of an offence against a provision of this local law or has paid a penalty infringement notice is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complied with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence – the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) This section applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence committed by the corporation in contravention of this local law.

20 Owners and occupiers must ensure compliance with the local law

- (1) The owner and occupier of premises must ensure that a person who is operating a licence regulated activity on the premises complies with this local law.
- (2) If a person who is operating a licence regulated activity on the premises commits an offence against a provision of this local law, the owner and the occupier of the premises also commit an offence, namely, the offence of failing to ensure that the person who is operating the licence regulated activity on the premises complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision.

- (3) Evidence that the person who is operating the licence regulated activity on the premises has been convicted of an offence against a provision of this local law or has paid a penalty infringement notice is evidence that the owner and the occupier of the premises committed the offence of failing to ensure that the person who is operating the licence regulated activity on the premises complied with the provision.
- (4) However it is a defence for an owner or occupier to prove that—
 - (a) the owner or occupier exercised reasonable diligence to ensure that the person operating the licence regulated activity on the premises complied with the provision; or

- (b) the non compliance with a provision of this local law occurred without that person's knowledge or consent.

21 Liability of third parties

- (1) Any person involved in a contravention of this local law commits an offence.

Maximum penalty for subsection (1)—the penalty for which any person who committed the contravention would be liable.

- (2) For the purposes of section 21(1) (Liability of third parties) of this local law, a person involved in a contravention of this local law is any person who—
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by threats or promises or otherwise, the contravention; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with others to effect the contravention; or
 - (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

22 Attempts to commit offences

- (1) A person who attempts to commit an offence under this local law commits an offence.

Maximum penalty for subsection (1)—half the maximum penalty for committing the offence.

- (2) The provisions of the Criminal Code (relevant to attempts to commit offences) apply to the attempt.

23 Defence

It is a defence to any breach of or non-compliance with a provision contained in this local law if a person has a lawful excuse or defence.

Example—

It is a defence to any breach or non-compliance of any provision contained in a local law if a person was not criminally responsible in accordance with Chapter 5 (Criminal Responsibility) of the *Criminal Code*.

Part 5 Subordinate local laws

24 Subordinate local laws

The local government may make a subordinate local law with respect to -

- (a) the assessment criteria for deciding an application for a licence for the operation of a licence regulated activity pursuant to the Schedule (Dictionary) of this local law; and
- (b) an activity as a licence regulated activity pursuant to the Schedule (Dictionary) of this local law; and
- (c) the minimum standards with which the operation of a licence regulated activity must comply pursuant to the Schedule (Dictionary) of this local law; and
- (d) any minimum standards for the purposes of section 5(4) (Requirement for a licence) of this local law; and
- (e) a thing as a vehicle pursuant to the Schedule (Dictionary) of this local law; and
- (f) a thing as a structure pursuant to the Schedule (Dictionary) of this local law; and
- (g) a licence regulated activity in respect of the operation of which a person is not required to hold a licence pursuant to section 5(3) (Requirement for a licence) of this local law; and
- (h) the information that must accompany an application for a licence pursuant to section 6(1)(c)(v) (Application for a licence) of this local law; and
- (i) the circumstances in which the local government may waive the requirements of section 6 (Application for a licence) of this local law pursuant to section 6(6)(c) (Application for a licence) of this local law; and
- (j) the term of the licence pursuant to section 8(1) (Term of a licence) of this local law; and
- (k) the records that must be kept, the place at which those records must be kept and the period for which those records must be kept pursuant to section 9(2)(l) (Conditions of a licence) of this local law; and

- (l) the conditions that must be imposed in a licence or that will ordinarily be imposed in a licence pursuant to section 9(3) (Conditions of a licence) of this local law; and
- (m) the changes in circumstances since a licence was granted that make the continued operation of the licence inappropriate pursuant to section 12(1)(f) (Cancellation or suspension of a licence) of this local law; and
- (n) the records that are required to be kept pursuant to section 16(2)(b) (Inspection of a licence regulated activity) of this local law; and
- (o) the terms of a periodic inspection, monitoring or management program in respect of the operation of a licence regulated activity pursuant to section 16(4)(b) (Inspection of a licence regulated activity) of this local law; and

Part 6 Transition, Savings and Repeals

25 Repeals

The following Local Laws are repealed —

- Local Law no.13 (Cemeteries) 2005, gazetted 18 February 2005
- Local Law No. 19 (Swimming Pools) 1999, gazetted 13 August 1999
- Local Law No. 20 (Commercial Use of Roads) 1999, gazetted 30 April 1999
- Local Law No. 30 (Camping Grounds) 1999, gazetted 14 January 2000
- Local Law No. 31 (Caravan Parks) 1999, gazette 14 January 2000
- Local Law No. 50 (Control of Advertisements), gazetted 12 April 1996

26 Existing Permits

Any person who immediately before the commencement of this local law held a permit under any local law to operate an activity which is now a licence regulated activity is taken to be a holder of a licence under this local law to operate that activity.

Schedule 1 Dictionary

section 3

approval has the meaning given in *Local Law No. 1 (Administration) 2013*.

assessment criteria means the criteria, if any, specified in a subordinate local law for deciding an application for a licence for the operation of a licence regulated activity.

authorised person means a person authorised by the local government pursuant to *Local Law No. 1 (Administration) 2013*.

compliance notice means the written notice given pursuant to section 14 (Compliance notice) of this local law.

corporation means a corporation as defined in the *Corporations Act 2001 (Cth)* and includes an association as defined in the *Associations Incorporation Act 1981*.

Court means the court of law which has jurisdiction to deal with offences under this local law.

device means a design, writing, drawing, depiction, structure, erection, placard, banner, notice, signboard, notice of sign, publication or sign of any kind.

election means—

- (a) an election of a member of the local government; or
- (b) an election of a member of the Legislative Assembly; or
- (c) an election of a member of the House of Representatives or the Senate; or
- (d) an election of a person to a position in accordance with the provisions of an Act.

environmental harm has the meaning given in the *Environmental Protection Act 1994*.

environmental nuisance has the meaning given in the *Environmental Protection Act 1994*.

executive officer of a corporation means a person who is concerned with, or takes part in, the corporation's management whether or not the person is a director or the person's position is given the name of executive officer.

exempt licence regulated activity see section 5(3).

food and food business have the meaning given in the *Food Act 2006*

footpath means the land between the property alignment and the kerb of the carriageway of a road that is designated for, or has one of its main uses, use by pedestrians.

footpath dining means the use of the footpath or an area which has as one of its main uses, use by pedestrians, as an area for patrons of a food business operating in premises on a road to consume food and drink

Example

An area which has as one of its main uses, use by pedestrians is a mall.

knowledge includes actual or constructive knowledge.

land has the meaning given in the *Sustainable Planning Act 2009*.

licence means a licence which has been granted pursuant to section 7 (Deciding application for a licence) of this local law or amended, renewed or transferred pursuant to section 11 (Amendment, renewal or transfer of a licence) of this local law which—

- (a) has not expired pursuant to section 8(2) (Term of a licence) of this local law; and
- (b) has not been cancelled pursuant to section 12 (Cancellation of a licence) of this local law.

licence regulated activity means—

- (a) an activity which is prescribed as a licence regulated activity in in schedule 2 of this local law; or
- (b) an activity which would ordinarily be prohibited by a local law local law unless authorised by a licence, but for which a local law or subordinate local law prescribes that a licence is not required.

the local government means Ipswich City Council.

local government controlled area—

- (a) means land, facilities and other infrastructure owned, held in trust or otherwise controlled by the local government, other than a road; and

Examples of local government controlled areas—

- *parks, reserves and recreational areas*
- *conservation parks*
- *cemeteries*
- *local government operated library, including mobile libraries*
- *local government Chambers and local government offices*
- *jetties.*

- *a mall*

(b) includes part of a local government controlled area.

Local Government Act has the meaning given to the term in the Act and includes approvals granted pursuant to a Local Government Act.

local law includes any subordinate local laws and all approvals granted pursuant to this local law.

mall means a mall established in accordance with the Act.

minimum standards means the standards, if any, specified in a subordinate local law with which the operation of a licence regulated activity or an exempt licence regulated activity must comply.

nuisance has the meaning given in *Local Law No. 8 (Nuisances and Community Health and Safety) 2013*.

occupier of premises means the person who has the control or management of the premises and includes a person in charge of the operation of the licence regulated activity on the premises.

operation of an activity, including a licence regulated activity, includes carrying out, providing, performing, erecting, maintaining, undertaking or otherwise engaging in any activity or, in any activity, in respect of the licence regulated activity.

owner of premises means the person for the time being entitled to receive the rent for the premises or would be entitled to receive the rent for it if it were let to a tenant at a rent.

penalty infringement notice means an infringement notice under section 15 of *the State Penalties Enforcement Act 1999*.

perform work includes take action to comply with a Local Government Act and includes work required to be performed pursuant to a compliance notice or a condition of a licence.

planning scheme means the planning scheme for Ipswich City Council made pursuant to the superseded *Integrated Planning Act 1997*, as amended pursuant to the *Planning Act* from time to time.

premises means any road, land, building or structure and includes any part thereof.

prescribed fee means the fee prescribed by the local government.

prescribed form means the form prescribed by the local government.

road means —

- (a) a road as defined in the Act, section 59; and
- (b) a State-controlled road in respect of which the chief executive has given written agreement under the *Transport Operations (Road Use Management) Act 1995*, section 66(5)(b) where that act requires such agreement.

State-controlled road means a State-controlled road under the *Transport Infrastructure Act 1994*.

Schedule 2

Licence regulated activities

section 3

Part 1

Licence regulated activities

camping ground
caravan park
cattery
commercial activity on a local government controlled area or road
election sign
entertainment venue
kennel
pet shop
public swimming pool
cemetery
stables
temporary advertising device
temporary entertainment event

Part 2 Definitions of licence regulated activities

camping ground has the same meaning as in the *Planning Scheme*

caravan park has the same meaning as in the *Planning Scheme*

cattery means the use of premises for the keeping, boarding or breeding of cats on a commercial basis

commercial activity on a local government controlled area or road means the use of a local government controlled area or road for commercial or business purposes and includes —

- (a) soliciting for or carrying on the supply of goods and services (including food or drink) for profit,
- (b) activities promoting the supply of goods and services,
- (c) busking,
- (d) footpath dining,
- (e) such other activity of a commercial nature as is specified in a subordinate local law

but does not include the following—

- (f) the provision of a public passenger service under the *Transport Operations (Passenger Transport) Act 1994*;
- (g) a business on part of a road if the person carrying on the business is authorised by a permit under the *Land Act* to occupy the relevant part of the local government controlled road or area for carrying on the business;
- (h) a business that a person is authorised to carry on under the *Transport Infrastructure Act 1994*;
- (i) using a local government controlled area or road for a particular purpose if the use constitutes development under the *Sustainable Planning Act 2009*.
- (j) undertaking an activity that is authorised by a permit, licence or approval from the local government or management authority appointed under the provisions of *Local Law No. 7 (Local Government Controlled Roads and Areas) 2013* or *Local Law No.3 (Commercial Licensing)*.
- (k) undertaking an activity that is authorised by a lease or approval under the *Land Act 1994*.

election sign means

- (a) a device advertising a political candidate or candidates, or a purported political candidate or candidates, a registered political party, or a campaign for a Commonwealth, State or Local Government election; or
- (b) a device advertising a case for or against a question or bill that is to be submitted to electors at a referendum or other poll that is administered by the State or Commonwealth electoral commission.

entertainment venue means a place that is open to the public for entertainment whether or not a charge for admission is made and whether or not the person who controls admission reserves a right to refuse admission but does not include a shop.

Examples:

- a cinema;
- a theatre;
- a concert hall;
- a billiard saloon;
- an electronic games centre;
- an indoor sports centre (including a bowling alley);
- an art gallery;
- a museum;
- a bazaar or flea market (of a non-permanent nature);
- a fair ground.

kennel means a place used for keeping, boarding or breeding of dogs on a commercial basis

pet shop means a premises at which animals are offered for sale.

cemetery means premises for which approval has been granted by the local government under the planning scheme or otherwise for the burial or disposal of human remains other than premises owned, operated or held in trust by the local government.

public swimming pool means a swimming pool that is made available for use to -

- (a) members of the public or a section of the public on payment of an entrance fee or other charge; or
- (b) participants in organised swimming or diving competitions or in training for organised swimming or diving competitions; or
- (c) persons who have a commercial relationship with the owner of the pool.

Examples -

A swimming pool available for use by paying guests in a hotel or motel.

A swimming pool available for use by customers or employees of the owner.

stables means a premises used for the keeping boarding or breeding of horses on a commercial basis

temporary advertising device means

- (a) device for the purposes of advertising (other than an election sign) that is visible from a road or other public place and that is constructed in a manner which would allow the device to be readily removed or relocated and includes devices which can be attached to a stationary anchor point or a building, structure or the ground; or
- (b) or a device for the purposes of advertising that is attached to a street sign, bus shelter or the like in accordance with an agreement for a fixed period with the local government.

temporary entertainment event means the use of premises for an event that is open to the public for entertainment whether or not a charge for admission is made and whether or not the person who controls admission to the place reserves a right to refuse admission and for which the opening to the public does not constitute development under the *Sustainable Planning Act 2009*.

Examples of temporary entertainment events:

- *A bazaar, flea market or farmers market.*
- *A music festival.*

Endnotes

1 Index to Endnotes

- 2 Date to which amendments incorporated
- 3 Key
- 4 Table of reprints
- 5 List of legislation
- 6 List of annotations

2 Date to which amendments incorporated

This reprint includes all amendments that commenced operation on or before the

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation
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amd	= amended
ch	= chapter
def	= definition
div	= division
hdg	= heading
ins	= inserted
om	= omitted
p	= page
pt	= part
renum	= renumbered
rep	= repealed
s	= section
sch	= schedule
sdiv	= subdivision

4 Table of reprints

A reprint is issued upon the commencement of an amending instrument. A reprint is given the date of commencement of the amending instrument.

Table of reprints of this local law – no amendments

5 List of Legislation

Original Local Law

Local Law No. 3 (Commercial Licensing) 2013

date of gazettal 5 July 2013

6 List of annotations