

**IPSWICH CITY COUNCIL
LOCAL LAW NO. 18 (CONTROL OF NUISANCES)**

SUMMARY OF PROVISIONS

PART 1 - PRELIMINARY

1. Citation
2. Objects
3. Definitions
4. Application of this local law

PART 2 - NOISE POLLUTION

Division 1 - Regulation of noise emission

5. Local government's powers to regulate noise pollution
6. Prohibition of noise emission contrary to local law policy

Division 2 - Noise abatement notices

7. Excessive noise
8. Noise abatement notices

PART 3 - FIRES AND FLAMMABLE MATERIALS

Division 1 - Regulation of fires in the open

9. Regulation of lighting and maintaining fires in the open
10. Compliance with local law policies

Division 2 - Fire hazards

11. Fire hazards

Division 3 - Nuisances

12. Nuisances

Division 4 - Compliance notices

13. Compliance notices

PART 4 - MISCELLANEOUS NUISANCES

Division 1 - Visual pollution

14. Prohibition of visual pollution

Division 2 - Dangerous, intrusive and overgrown vegetation

15. Overgrown allotments

Division 3 - Light spillage

16. Light spillage

Division 4 - Air-borne hazards

17. Air-borne hazards

Division 5 - Atmospheric pollutants

18. Atmospheric pollutants

PART 5 - PERMITS

19. Permits allowing contravention of local law
20. Application for permit
21. Grant of permit
22. Term of permit
23. Conditions of permit
24. Compliance with conditions of permit
25. Suspension or cancellation of permit

PART 6 - MISCELLANEOUS

26. Local government's power to have work carried out
27. Powers of entry and cost recovery
28. Common law remedies
29. Local law policies

PART 1 - PRELIMINARY

Citation

1. This Local Law may be cited as Local Law No.18 (Control of Nuisances).

Objects

2. The objects of this local law are to protect the environment, and public health, safety and convenience, by eliminating or reducing nuisances resulting from:
 - (a) excessive noise; and
 - (b) smoke, other atmospheric pollutants, and wind-borne materials; and
 - (c) light spillage; and
 - (d) vegetation overgrowth; and
 - (e) visual pollution resulting from unsightly accumulations of objects and materials.

Definitions

3. In this local law:

‘**allotment**’ means a separate parcel or piece of land.

‘**approved**’ means approved under local law policies or by an authorised person.

‘**Australian Standard**’ means a standard issued or approved by the Standards Association of Australia.

‘**authorised person**’ means a person who is authorised by the local government to exercise the powers of an authorised person under this local law.

‘**excessive noise**’ see section 7.

‘**fire hazard**’ means anything that, because of its flammable nature, its position, or its quantity, exposes property to significant risk of damage or destruction by fire and includes anything that is declared under the local law policies to be a fire hazard.

‘**occupier**’ of a place means the person who has the control or management of the place and includes a person in charge of activities in the place that may result in contravention of, or a nuisance under, this local law.

‘**vegetation**’ includes a tree, bush, shrub, plant or grass.

‘**waste area**’ means an area within the Ipswich City area in which Ipswich City Council undertakes or has contracted for the removal or collection of waste from any place.

Application of this local law

- 4.(1) The powers given by this local law must be exercised in a way that is consistent with environmental protection policies, environmental management programs and environmental protection orders under the Environmental Protection Act 1994.
- (2) This local law does not apply to anything authorised by an environmental authority under the Environmental Protection Act 1994.¹

PART 2 - NOISE POLLUTION

Division 1 - Regulation of noise emission

Local government’s powers to regulate noise pollution

5. The local government may, by local law policy, regulate the emission of noise.

Prohibition of noise emission contrary to local law policy

- 6.(1) If noise is emitted from a place in contravention of a local law policy under this division, the occupier of the place commits an offence.

Maximum penalty - 20 penalty units.

- (2) However, it is a defence to a charge of an offence against this section for the occupier to prove that the noise emission happened despite the occupier’s reasonable precautions to prevent unlawful noise emission.

Division 2 - Noise abatement notices

Excessive noise

- 7.(1) Noise is excessive if:
- (a) the noise is emitted in contravention of a local law policy; or
 - (b) the noise is likely to cause irritation, annoyance or distress to the occupants of residential premises, or interference with lawful activities on residential premises, in the neighbourhood of the place from which the noise is emitted.

¹ An environmental authority is an approval or licence under the Environmental Protection Act 1994 (Chapter 3, Part 4).

- (2) In deciding whether noise is likely to cause irritation, annoyance or distress to the occupants of residential premises or interference with lawful activities on residential premises, the following factors must be considered:
- (a) the intensity of the noise;
 - (b) the type and characteristics of the noise;
 - (c) the extent the noise is likely to interfere with the use and enjoyment of the residential premises at the time of its emission;
 - (d) the character of the neighbourhood (including its topographical features), and the kinds of noises that would normally and reasonably be expected in the neighbourhood;
 - (e) noise suppression measures that have been, or could reasonably be, taken in the circumstances.

Noise abatement notices

- 8.(1) If noise emitted from a place is excessive, an authorised person may, by written notice given to the occupier of the place, require the occupier to take specified action, within a specified time, to stop the noise or reduce it to an acceptable level.
- (2) A person must comply with a notice under this section within the time allowed in the notice.

Maximum penalty - 20 penalty units.

PART 3 - FIRES AND FLAMMABLE MATERIALS

Division 1 - Regulation of fires in the open

Regulation of lighting and maintaining fires in the open

- 9.(1) The local government may, by local law policy, prohibit or restrict the lighting and maintaining of fires in the open in the whole, or designated parts, of the local government's area.
- (2) However, a local law policy cannot prohibit or restrict the lighting and maintaining of a fire if:
- (a) the fire is authorised by notification under section 63 or permit under section 65, or required by a notification or notice under section 69, of the Fire Service Act 1990; or

- (b) a person is authorised or required to light the fire in the performance of duties under another Act.

Compliance with local law policies

- 10. A person must comply with a prohibition or restriction imposed under this division.

Maximum penalty - 50 penalty units.

Division 2 - Fire hazards

Fire hazards

- 11. The occupier of land must keep the land free from fire hazards.

Maximum penalty - 50 penalty units.

Division 3 - Nuisances

Nuisances

- 12. A person must not light or maintain a fire if:

- (a) the smoke or other products of combustion are likely to cause irritation, annoyance or distress to others; or
- (b) the fire exposes property to the risk or damage or destruction by fire.

Maximum penalty - 50 penalty units.

Division 4 - Compliance notices

Compliance notices

- 13.(1) An authorised person may, by written notice given to the occupier of land, require the occupier to:

- (a) extinguish a fire on the land that has been lit or maintained in contravention of this Part; or
- (b) take specified action, within a specified time, to remove a fire hazard on the land.

- (2) A person must comply with a notice under this section.

Maximum penalty - 50 penalty units.

- (3) However, it is a defence to a charge of an offence against subsection (2) to prove that there is a reasonable excuse for the non-compliance.

PART 4 - MISCELLANEOUS NUISANCES

Division 1 - Visual pollution

Prohibition of visual pollution

- 14.(1) An occupier on whose land objects or materials are brought, or allowed to accumulate, that seriously detract from the visual amenity of the land, commits a nuisance.
- (2) A person who allows a waste container to remain in the road reserve in a waste area for more than 24 hours after the normal waste collection day, commits a nuisance, unless approval in writing has been obtained from Council.

Maximum penalty – 10 penalty units.

- (3) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier, within a time stated in the notice, to:
- (a) remove unsightly objects or materials from the land; or
 - (b) take other specified action to stop the nuisance.
- (4) An occupier must comply with a notice under this section.

Maximum penalty - 20 penalty units.

- (5) However, it is a defence to a charge of an offence against subsection (4) to prove that there is a reasonable excuse for the non-compliance.

Division 2 - Dangerous, intrusive and overgrown vegetation

Overgrown allotments

- 15.(1) If land is overgrown with vegetation so the vegetation becomes unsightly or likely to attract reptiles or vermin, the owner of the land commits a nuisance.
- (2) If an owner commits a nuisance under this section, an authorised person may, by written notice given to the owner, require the owner, within a time stated in the notice, to clear the vegetation to an extent specified in the notice.

- (3) An owner must comply with a notice under this section.

Maximum penalty - 20 penalty units.

- (4) In relation to the same land, if the owner commits a nuisance under this section within 12 months of being given a written notice pursuant to subsection 2, the owner commits an offence.

Maximum penalty – 50 penalty units.

Division 3 - Light spillage

Light spillage

- 16.(1) An occupier of land who uses, or permits the use of, artificial illumination on the land commits a nuisance if the artificial illumination results in spillage of light that is likely to cause irritation, annoyance or distress to others.
- (2) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier to take, within a time stated in the notice, specified action to stop the light spillage or to reduce it to an acceptable level.
- (3) An occupier must comply with a notice under this section.

Maximum penalty - 20 penalty units.

Division 4 - Air-borne hazards

Air-borne hazards

- 17.(1) If there are objects or materials on land that are:
- (a) unsecured or inadequately secured; and
 - (b) likely to be carried away in high winds with resulting risk of personal injury or property damage;

an authorised person may, by written notice given to the owner, require the owner to take, within a time stated in the notice, specified action to secure the objects or materials or to remove them to a safe place.

- (2) An occupier must comply with a notice under this section.

Maximum penalty - 20 penalty units.

Division 5 - Atmospheric pollutants

Atmospheric pollutants

- 18.(1) An occupier of land commits a nuisance if activities on the land result in the emission from the land of odours, dust or other atmospheric pollutants likely to cause irritation, annoyance or distress to others.
- (2) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier to take, within a time stated in the notice, specified action to stop the emission of odours, dust or other atmospheric pollutants or to reduce the emission to an acceptable level.
- (3) An occupier must comply with a notice under this section.

Maximum penalty - 20 penalty units.

PART 5 - PERMITS

Permits allowing contravention of local law

- 19.(1) A local government may, for a reason it considers appropriate, grant a permit authorising an activity, or a state of affairs, that would, apart from the authorisation, be unlawful or a nuisance under this local law.
- (2) However, the local government cannot grant a permit authorising an activity or state of affairs that would be unlawful under another law.

Application for permit

20. An application for a permit must include or be accompanied by:
- (a) details of the land or premises for which the permit is sought; and
 - (b) a detailed description of the activity or state of affairs for which the permit is sought; and
 - (c) measures that have been, or will be, taken to minimise adverse effects of the activity or state of affairs; and
 - (d) a statement of the likely effect of the grant of the permit, and the results of any consultations that have been held with occupiers of land or premises likely to be affected; and
 - (e) other information and materials required under local law policies.

Grant of permit

- 21.(1)** The local government may only grant a permit if satisfied that, in the circumstances of the particular case, there are good reasons for relaxing the requirements of this local law.
- (2) In deciding whether to grant a permit, the local government must have regard to:
- (a) relevant planning and environmental protection policies; and
 - (b) the objects of this local law.

Term of permit

- 22.(1)** A permit may be granted for a single occasion or for a term (not longer than two years) specified in the permit.
- (2) If a permit is granted for a specified term, the local government may, from time to time, on application by the holder of the permit, renew the permit.
- (3) A term for which a permit is granted or renewed must be fixed as required by a relevant local law policy, or as decided by the local government when it grants the permit or the renewal.

Conditions of permit

- 23.(1)** A permit may be granted on conditions the local government considers appropriate.
- (2) The conditions of a permit may, for example:
- (a) require the holder of a permit to give specified notice of activities to which the permit relates to persons who may be affected by the activities;
 - (b) require the holder of the permit to take specified action to minimise adverse effects of the activities or state of affairs to which the permit relates.
- (3) The local government may, by local law policy, prescribe conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

Compliance with conditions of permit

- 24.** The holder of a permit must ensure that the conditions of the permit are complied with.

Maximum penalty - 50 penalty units.

Suspension or cancellation of permit

- 25.(1) If the holder of a permit contravenes a condition of the permit, the local government may, by written notice given to the holder, suspend or cancel the permit.
- (2) However, before suspending or cancelling a permit, the local government must:
- (a) give written notice to the holder of the proposed suspension or cancellation; and
 - (b) allow the holder a period stated in the notice (which must be at least one month from when the notice is given) to make written representations to the local government about the proposed suspension or cancellation; and
 - (c) consider representations made in response to the notice.

PART 6 - MISCELLANEOUS

Local government's power to have work carried out

26. If a person fails to have work required by a notice under this local law carried out, the local government may itself have the work carried out.

Powers of entry and cost recovery

- 27.(1) The local government may enter land to perform the work under section 1066 of the Act.²
- (2) If the occupier is also the owner of the relevant land, the amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under sections 1066, 1067 and 1068 of the Act.
- (3) If the occupier is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the occupier together with interest on the same basis as applies to an owner of land under section 1067 of the Act.

Common law remedies

28. A common law remedy for a nuisance under this local law cannot be given unless the nuisance would, apart from this local law, be actionable at common law.

² A magistrate may make an order for entry to the land under section 658 (Order on occupier who refuses entry) if the occupier refuses to permit entry.

Local law policies³

29. The local government may make local law policies about:

- (a) fire hazards;⁴ or
- (b) regulating the emission of noise;⁵ or
- (c) lighting and maintaining of fires in the open;⁶ or
- (d) other matters about which this local law specifically allows for the making of local law policies.

³ See section 464 of the Local Government Act 1993.

⁴ See definition of fire hazard in section 3.

⁵ See section 5.

⁶ See section 9.