

IPSWICH CITY COUNCIL LOCAL LAW NO. 32 (PEDESTRIAN MALLS)

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CHAPTER 1 - PRELIMINARY

Citation

1. This local law may be cited as Ipswich City Council Local Law No. 32 (Pedestrian Malls).

Objects

2. The objects of this local law are to enable the Council to:
 - (a) provide for and encourage public access to and use and enjoyment of pedestrian malls for both active and passive recreation; and
 - (b) ensure that such access use and enjoyment occurs consistently with the preservation and enhancement of public safety and amenity; and
 - (c) protect and preserve the facilities installed within pedestrian malls and all aspects of the environment within pedestrian malls.

Definitions

3. In this law:

‘**Act**’ means the Local Government Act 1993.

‘**animal**’ means any animal of any species as defined in Local Law No. 4 (Keeping and control of animals).

‘**approved vehicle**’ means a vehicle approved under section 8.

‘**approved vehicle label**’ means a label issued by the Council to identify a vehicle as an approved vehicle.

‘**authorised person**’ means a person authorised by the Council to exercise the powers of an authorised person under this law.

‘**bicycle**’ has the meaning given by the Transport Operations (Road Use Management) Act 1995.

‘**Chief Executive Officer**’ means the chief executive officer of the Ipswich City Council.

‘**Council road**’ means a road other than a State-controlled road.

‘**delivery vehicle**’ means a vehicle approved under section 8(1)(a).

‘**essential services vehicle**’ means a motor vehicle that is in the care or control of any officer of:

- the Queensland Ambulance Service
- the Queensland Fire Service
- a fuel gas supplier franchised under the Gas Act 1965
- Australia Post
- an electricity entity under the Electricity Act 1994
- the police force
- the State Emergency Service
- a carrier or service provider licensed under the Telecommunications Act 1997
- the Council
- another entity specified by subordinate local law.

‘**goods**’ has the meaning given by the Transport Operations (Road Use Management) Act 1995.

‘**install**’ means construct, make mark, place or erect, or affix to or paint on any surface or structure, and repair, maintain, manage and control.

‘**licence**’ means any licence, permit or certificate and any renewal thereof issued under this local law and in force at any material time, conferring a right to limited use and access over a specified part of a pedestrian mall.

‘**official mall sign**’ means any sign, signal, marking, light or device installed for the purpose of regulating, prohibiting, warning or guiding persons or traffic on a pedestrian mall, which is either:

- (a) an official traffic sign; or
- (b) contained in a subordinate local law.

‘**official traffic sign**’ has the meaning given by the Transport Operations (Road Use Management) Act 1995.

‘**owner**’ when used in respect of a vehicles, means:

- (a) a person who is the owner within the meaning of that term given by the Transport Operations (Road Use Management) Act 1995 or Justices Act 1886; and
- (b) a person who is the owner within the meaning of that term given by the Transport Infrastructure (Roads) Regulation 1991, or by a corresponding law of a State or Territory of Australia.

‘**pedestrian mall**’ means a road or part of a road established as a mall pursuant to Chapter 13, part 3 of the Act.

‘**pedicab**’ means a rickshaw pulled by a bicycle or tricycle.

‘**permit**’ means any permit, including any renewal thereof, issued under this local law and in force at any material time.

‘**prescribed hours**’ see section 4.

‘**road**’ means:

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d); or
- (f) a State-controlled road under the Transport Infrastructure Act 1994.

‘**roadside vending**’ has the meaning given by the Transport Operations (Road Use Management) Act 1995.

‘**roadwork**’ means work for the construction, maintenance, repair or improvement of a road under this law.

‘**service vehicle**’ means a vehicle approved by the Council under section 8(1)(b).

‘**special vehicle**’ means a vehicle approved by the Council under section 8(1)(c).

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

‘**tricycle**’ has the meaning given by the Transport Operations (Road Use Management) Act 1995.

‘**traffic**’ includes the use by any person of any road or off-street regulated parking area, or the presence therein or thereon of any person, vehicle, tram, train, animal, or other movable article or thing.

‘**vehicle**’ has the meaning given by the Transport Operations (Road Use Management) Act 1995¹.

‘**wheeled recreational device**’ has the meaning given by the Transport Operations (Road Use Management - Road Rules) Regulations 1999.

¹ A pedicab is a vehicle under this definition.

Prescribed hours

4. In this law, ‘**prescribed hours**’ means:
- (a) the period between 6.00 p.m. on one day and 8.00 a.m. on the next day; or
 - (b) if another time period is prescribed by subordinate local law, the time period so prescribed.

Relationship with other laws

5. This law is in addition to and does not derogate from:
- (a) other laws regulating the use of vehicles²; and
 - (b) other laws about roads³; and
 - (c) other laws about the keeping or control of animals.

CHAPTER 2 - PEDESTRIAN MALLS

PART 1 - VEHICLES IN MALLS

Use of vehicles in a pedestrian mall

- 6.(1) Subject to subsection (2), a person must not ride or use a vehicle or ride or use a wheeled recreational device or ride a bicycle or tricycle on a pedestrian mall.

Maximum penalty - 50 penalty units.

- (2) Subsection (1) does not apply to:
- (a) an approved vehicle during the prescribed hours⁴;
 - (b) an essential services vehicle, which is being used to provide the service for which it is designed or ordinarily used;
 - (c) a bicycle which is walked from the road directly to a bicycle rack on a pedestrian mall or from a bicycle rack on a pedestrian mall directly to a road.

² Principally the Transport Operations (Road Use Management) Act 1995 which imposes restrictions on the making of local laws dealing with traffic. This law is to be read to operate to the full extent of, but does not to exceed, the Council’s law making powers with respect to matters concerning traffic.

³ For example, the Rural Lands Protection Act 1985 which contained provisions dealing with fencing of roads which are declared stock routes. Also, section 40 of the Transport Infrastructure Act 1994 and section 145 of the Transport Operations (Passenger Transport) Act 1994 may apply to roadworks carried out or authorised under this law which have an impact on a State-controlled road or on public transport services.

⁴ see Section 4.

Seizure of certain vehicles

- 7.(1) This section applies if an authorised person finds a person committing an offence against section 6(1) involving a bicycle, tricycle, power assisted cycle, pedicab, vehicle or wheeled recreational device and:
- (a) the person does not immediately cease to commit the offence upon being directed by the authorised person so to do; or
 - (b) the authorised person has found the person committing an offence of the same or a similar type within the preceding twenty-eight (28) days.
- (2) Where this section applies, the authorised person may seize and remove the vehicle or wheeled recreational device.
- (3) The authorised person may use reasonably necessary force to effect the seizure and removal.
- (4) However, the force an authorised person may use under this section does not include force likely to cause bodily harm to a person.
- (5) A vehicle or wheeled recreational device seized and removed under subsection (2) must be dealt with in accordance with section 21.

Approval of vehicles

- 8.(1) The Council may:
- (a) approve a vehicle as a delivery vehicle, if the vehicle is used to deliver goods or pick up goods from premises adjacent to a pedestrian mall; or
 - (b) approve a vehicle as a service vehicle if the vehicle is used to provide services (not being personal transportation) to premises adjacent to a pedestrian mall; or
 - (c) approve a vehicle as a special vehicle if the vehicle is used for a special purpose in connection with premises adjacent to a pedestrian mall.
- (2) An application for approval of a vehicle under subsection (1) must be accompanied by such fee as the Council may determine from time to time and must contain or be accompanied by the material required under a subordinate local law.
- (3) Without limiting subsection (2), a subordinate local law may require an application to be accompanied by:
- (a) for a delivery vehicle, evidence that the vehicle is regularly used to deliver goods or pick up goods from premises adjacent to a pedestrian mall;

- (b) for a service vehicle, evidence that the vehicle is regularly used to provide services to premises adjacent to a pedestrian mall.
- (4) The Council must give to the applicant:
- (a) written notice of the Council's decision on the application; and
 - (b) if the application is approved, an approved vehicle label in respect of the vehicle.
- (5) The owner of an approved vehicle must ensure that the approved vehicle label is affixed:
- (a) to the left hand extremity of its windscreen; or
 - (b) if the vehicle is not fitted with a windscreen, to the vehicle in a conspicuous position;
- whenever the vehicle is on a pedestrian mall.

Maximum penalty - 10 penalty units.

- (6) An approval remains in force from the date of issue until the expiry date written on the face of the approval or, if no expiry date is so written, until 30 June next following the date of issue of the approval.
- (7) The owner of an approved vehicle and any other person who used an approved vehicle must comply with the conditions of approval.

Maximum penalty - 50 penalty units.

Other offences

- 9.(1) To avoid doubt, this section applies to vehicles which are lawfully on a pedestrian mall by virtue of section 6(2), but also creates additional offences in respect of vehicles which are not lawfully on the pedestrian mall.
- (2) A person must not:
- (a) drive a vehicle into or out of a pedestrian mall at any point other than a designated entry or exit point; or
 - (b) drive a vehicle upon a pedestrian mall in any area other than the area designated; or
 - (c) stop, stand or park a vehicle in or upon a pedestrian mall so as to hinder the free passage of other vehicles lawfully using the pedestrian mall; or

- (d) cause, suffer or permit a vehicle to be or to remain in or upon a pedestrian mall for a continuous period exceeding one (1) hour without the written approval of the Council first having been obtained; or
- (e) cause or permit a service access route so defined on the pavement to be blocked, obstructed or otherwise limited for a period exceeding five (5) minutes;
- (f) cause or permit an entry or exit point to or from any premises adjacent to a pedestrian mall to be blocked, obstructed or otherwise limited at any time whatsoever.

Maximum penalty for each of paragraphs (a) to (f) - 50 penalty units.

- (3) When a vehicle is found in or upon a pedestrian mall in contravention of subsection (2)(c), (d), (e) or (f) for a continuous period in excess of two (2) hours, a separate offence is committed at the conclusion of each hour calculated from the time when the vehicle was first so found during which the vehicle continuously remains in contravention.

Example: If a vehicle is detected at 10.00 a.m. as being parked contrary to subsection (2)(c), and is proved to have been continuously parked contrary to the subsection from that time to 1.10 p.m. on the same day, three (3) separate offences are committed.

Damage to malls

10. A person must not:

- (a) cause damage to the surface of, or any structures, fixtures or the like in, a pedestrian mall; or
- (b) interfere with the ordinary and reasonable use of a pedestrian mall by any other person within the pedestrian mall.

Maximum penalty - 50 penalty units.

Damage to property in mall

11.(1) This section does not limit or affect section 10(a).

- (2) If a driver of a vehicle by driving, standing or parking such vehicle in or upon a pedestrian mall causes any damage to any property of the Council:
 - (a) the driver and the owner of the vehicle (if not the driver) are jointly and severally liable to pay the Council the cost incurred by the Council, in repairing the damage; and
 - (b) that cost may be recovered by the Council as a liquidated debt.

- (3) Without limiting the operating of subsection (1), if oil or any other product falls from a vehicle in or upon a pedestrian mall:
- (a) the driver of the vehicle is taken to have caused damage to property of the Council⁵; and
 - (b) the cost of cleaning up and/or removing the oil or product is a cost incurred by the Council in repairing that damage.

Seizure, detention and removal of property

- 12.(1) For the purposes of this section, ‘**property**’ includes goods, materials, and any other thing whatsoever, whether animate or inanimate, but does not include a vehicle or animal.
- (2) If an authorised person finds any property on a pedestrian mall in circumstances which, in the reasonable opinion of an authorised officer, constitute a contravention of this law, the authorised person may seize and remove the property.
- (3) However, if the property is in the possession or apparent possession of a person (the ‘**other person**’), an authorised person may not act under subsection (2) unless:
- (a) the authorised person has given the other person an oral or written direction to remove the property or otherwise deal with it so as to stop the contravention of this law within a reasonable time specified by the authorised person; and
 - (b) the other person fails to comply with that direction⁶.
- (4) the authorised person may use reasonably necessary force to effect the seizure and removal.
- (5) However, the force an authorised person may use under this section does not include force likely to cause bodily harm to a person.
- (6) Property seized and removed under subsection (2) must be dealt with in accordance with section 21.

PART 2 - ANIMALS IN MALLS

Prohibition of animals in a mall

⁵ An offence is committed under section 10. A contravention of this section may also constitute an offence under subsection 31 or 32 of the Environmental Protection (Water) Policy 1997, but an offence may be committed under this section and section 10 whether or not there is actual or potential run-off to drainage or water as is required to establish an offence under the subordinate local law.

⁶ Such a failure may be an offence under section 18, but the powers under this section may be exercised instead of or in addition to the power of prosecution for an offence against section 18.

13.(1) A person must not:

- (a) take an animal into a pedestrian mall; or
- (b) have the custody or control of an animal on a pedestrian mall,
except in pursuance of a permit in writing issued by the Council.

Maximum penalty - 50 penalty units.

- (2) An application for a permit under subsection (1) must be accompanied by such fee as the Council may determine from time to time and must:
 - (a) specify the purpose for which the animal is to be brought unto the pedestrian mall; and
 - (b) include or be accompanied by such other information as is prescribed in a subordinate local law.
- (3) Subsection (1):
 - (a) is subject to section 5 of the Guide Dogs Act 1971; and
 - (b) does not apply to a police officer who takes a police horse or police dog into a pedestrian mall in the course of the officer's duties or an animal used by a State Emergency Service member.
- (4) An authorised person may seize, detain and impound an animal found in a pedestrian mall in contravention of subsection (1).
- (5) An animal seized detained and impounded under subsection (4) must be dealt with in accordance with the provisions of Local Law No. 3 (Impounding of Animals) in all respects as though the animal had been seized detained and impounded under that law.

PART 3 - MALL MANAGEMENT AND OPERATION

Mall Manager

- 14.(1)** The Council may appoint a mall manager to carry out such duties relating to the use and operation of a pedestrian mall or any number of pedestrian malls as may be assigned to the manager.
- (2) The Council or a mall manager may exempt, in writing, any person from the provisions of section 13 or section 15(3) of this local law for such period and in accordance with such conditions as the Council or a mall manager may determine from time to time.

- (3) The Council or a mall manager may relax any of the provisions of section 13(2) or section 16 of this local law generally or in particular where the circumstances warrant such relaxation.

Conduct in a pedestrian mall

15.(1) This section has effect subject to the Peaceful Assembly Act 1992 and to Part 11 of the Police Powers and Responsibilities Act 1997.

(2) This section does not apply to anything which is done or authorised to be done under a lease of part of a pedestrian mall.

(3) A person must not:

- (a) sell or offer for sale any goods; or
- (b) display any goods for sale or otherwise stack or store or expose goods; or
- (c) carry on any business; or
- (d) set up and/or use any stalls, booths, stands, standing vehicles, tables or the like for the purpose of or in connection with the carrying on of any business, calling or employment; or
- (e) perform, busk or promote any form of entertainment; or
- (f) take part in any public demonstration or any public address; or
- (g) use or permit or suffer to be used any megaphone, sound, amplifier, radio, loud speaker, or the like or any other means of mechanically, electrically or artificially increasing or reproducing sound; or
- (h) provide food or drink or both to members of the public; or
- (i) put up any advertising device; or
- (j) seek or receive or indicate that he or she wishes to receive a donation of money from any person; or
- (k) take or have or be in control of anything whatsoever used, or which is apparently designed or capable of being used, for or in connection with any of the purposes stated in paragraphs (a) to (j).

in or upon a pedestrian mall unless such activity is conducted under a permit from the Council.

Maximum penalty for each of paragraphs (a) to (k) - 50 penalty units.

Permits for certain conduct

- 16.(1)** An application for a permit referred to in section 15 must be accompanied by such fee as Council may determine from time to time and must contain or be accompanied by the material required under a subordinate local law.
- (2) the Council must give to the applicant:
- (a) written notice of the Council's decision on the application; and
 - (b) if the application is approved, a written permit in respect of the activity to which the application relates.
- (3) It is a condition of every permit issued under this section that the permit:
- (a) must be kept undefaced and otherwise legible; and
 - (b) must be:
 - (i) displayed conspicuously on or in close proximity to any stall, booth, stand or the like to which it relates; or
 - (ii) where such display is not possible, produced to an authorised person forthwith upon request.
- (4) A permit issued under this section remains in force:
- (a) for the time specified in the permit; or
 - (b) if not time is specified, until the conclusion of the event or activity in respect of which the permit was granted; or
 - (c) if (a) and (b) do not apply, until 30 June next following the date of issue of the permit.
- (5) The applicant must ensure that the conditions of a permit are complied with.

Maximum penalty - 50 penalty units.

Official mall signs

- 17.(1)** The Council may install official mall signs at, in, on or near a pedestrian mall.
- (2) A person must not contravene an indication or direction given by an official mall sign.

Maximum penalty - 50 penalty units.

Directions by authorised persons

18.(1) An authorised person who finds a person in a pedestrian mall contravening a provision of this law may give that person any reasonable direction requiring the person to stop the contravention.

(2) A person must obey a direction given to the person under subsection (1).

Maximum penalty - 10 penalty units.

CHAPTER 4 - GENERAL

PART 1 - ENFORCEMENT

Division 1 - Compliance notices

Compliance notices to permit holders

19.(1) If the holder of a permit contravenes this law, a requirement of a subordinate local law, or a condition of the permit, an authorised person may give the holder a written notice (a '**compliance notice**') under this section.

(2) A compliance notice may:

- (a) if the contravention is of a continuing or recurrent nature - require the holder to stop the contravention; and
- (b) whether or not the contravention is of a continuing or recurrent nature - require the holder to take specified action, within a time specified in the notice, to remedy the contravention.

(3) The holder of the permit must comply with a notice under this section.

Maximum penalty - 100 penalty units.

Division 2 - Suspension or cancellation of Permit

Suspension or cancellation of permit

20.(1) If:

- (a) the holder of a permit does not comply with a requirement of a compliance notice; or
- (b) the holder of a permit contravenes this law, a requirement of a subordinate local law, or a condition of the permit and it is not reasonable or practical in the circumstances to give the holder a compliance notice before invoking this section; or
- (c) changes in circumstances since the permit was issued make the continued operation of a permit inappropriate, or

- (d) it appears to the Council that a permit was issued because of a materially false or misleading representation or declaration (made orally or in writing);

the Council may, by written notice given to the holder of the suspend or cancel, the permit.

- (2) However, before suspending or cancelling a permit, the Council must:
 - (a) give written notice to the holder of the permit of the proposed suspension or cancellation, including a statement of the grounds upon which it proposed to take the action; and
 - (b) allow the holder a reasonable period stated in the notice to make written representations to the Council about the proposed suspension or cancellation; and
 - (c) consider representations made in response to the notice.
- (3) Subsection (2) does not apply where:
 - (a) urgent or summary suspension or cancellation of the permit is necessary to protect public health or safety; or
 - (b) the circumstances of the case are such that acting under subsection (2) would defeat the operation of the power of suspension or cancellation.

Example: a permit for a 'one-off' event where a significant breach has occurred or is occurring, but where the event would be over, and the power or suspension or cancellation meaningless, if subsection (2) were complied with.

Division 3 - Dealing with seized property

Procedure on seizing property

- 21.(1) This section applies where a vehicle or wheeled recreational device or other property (in this section, referred to generically as '**property**') is seized under sections 6 or 12 of this law.
- (2) An authorised person who seizes property must, where the property is seized from a person, or where the person with actual or apparent possession of that property prior to its seizure can be ascertained:
 - (a) give the person a receipt for the property; and
 - (b) advise the person that it may be reclaimed on or after a day specified by the authorised person, being a day not less than fourteen (14) days after the date of seizure, by attending at the place specified by the authorised person and paying the prescribed fee.

- (3) If the person, or some other person who satisfies an authorised person that he or she is the owner of the property, reclaims the property and pays the prescribed fee on or within thirty (30) days after the day specified under subsection (2), the property must be returned to the person.
- (4) However, subsection (3) does not apply to property which has been seized under this law twice (or more often) within the period of twelve (12) months prior to the date of the latest seizure.
- (5) If property is not reclaimed under subsection (3), or if subsection (3) does not apply to the property, an authorised person may:
 - (a) if, in the opinion of the authorised person, the property is reasonably saleable, sell the property; or
 - (b) if paragraph (a) does not apply, or if the authorised person is unable to sell the property after making reasonable efforts, destroy or otherwise dispose of the property.
- (6) The process for sale under subsection (5)(a) must include reasonable and appropriate advertising, but the sale need not be by way of auction and may be made by private contract.
- (7) If a receipt and notice were not given to a person under subsection (2) when the property was seized:
 - (a) the advertising under subsection (6) must include information about the date, time and place of the seizure;
 - (b) the property must not be sold earlier than thirty (30) days after the date of commencement of the advertising.
- (8) If a person who satisfies an authorised person that he or she is the owner of the property reclaims the property and pays the prescribed fee and the costs (if any) incurred in relation to the sale after the time prescribed in subsection (3) but before the sale of the property, the property must be returned to the person.
- (9) However, subsection (8) does not apply to property which has been seized under this law twice (or more often) within the period of twelve (12) months prior to the date of the latest seizure.
- (10) An amount realised on sale of property must be applied:
 - (a) first towards the costs of the sale; and
 - (b) second by payment to the former owner of the property.

- (11) If the identify of the former owner of property is unknown, and no person establishes a valid claim to the proceeds of sale within one (1) year of the date of the sale, the proceeds to which the former owner would have been entitled under subsection (10)(b) become the absolute property of the Council.
- (12) A sale or disposal of property under this section confers valid and paramount title to the property sold or disposed of on the purchaser or disponee of the property as though the Council were the owner of the property regardless of the amount or value of the consideration (if any) and despite a failure to comply with a provision of this section.
- (13) However, subsection (12) does not affect a right which a person would otherwise have to claim damages against the Council if, because of a failure to comply with this section, the Council sells or disposes of property which it was not lawfully entitled to sell or dispose of.

PART 2 - SUBORDINATE LOCAL LAWS

Subordinate local laws

- 22.** The Council may make subordinate local laws in respect of any matter which this law requires or permits to be prescribed or dealt with by a subordinate local law.