



Bayside
CITY COUNCIL

**LOCAL LAW NO. 5
CONTROL OF SALE OF
AEROSOL SPRAY PAINT
CONTAINERS**

Bayside City Council

Local Law No. 5 - Control of Sale of Aerosol Spray Paint Containers

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BAYSIDE CITY COUNCIL

LOCAL LAW NO. 5

CONTROL OF SALE OF AEROSOL SPRAY PAINT CONTAINERS

PART 1 - PRELIMINARY

1. TITLE

This Local Law is the BAYSIDE CITY COUNCIL, Control of Sale of Aerosol Spray Paint Containers Local Law No. 5 and referred to below as 'this Local Law'.

2. OBJECTIVES OF THIS LOCAL LAW

The objectives of this Local Law are:

- (1) to allow and protect the quiet enjoyment by people of Municipal Places within the Municipal District;
- (2) to enable people in the Municipal District to carry out their day to day activities and to enjoy their recreational pursuits without having their peace and enjoyment compromised;
- (3) to protect against behaviour which causes detriment to the amenity and
- (4) environment of the Municipal District;
- (5) to recognise and respond to community expectations relating to the quality of life they expect and require and are capable of influencing;
- (6) to protect Council, community and other assets;
- (7) to preserve the visual amenity of the municipal district; and
- (8) to control the sale and transfer of aerosol spray paint containers.

3. AUTHORISING PROVISIONS

The Council’s authority to make this Local Law is contained in section 111(1) of the Local Government Act 1989.

4. COMMENCEMENT

This Local Law operates from the day following its making.

5. DATE THIS LOCAL LAW CEASES OPERATION

Unless this Local Law is revoked sooner, its operation will cease on the tenth anniversary of its making.

6. SCOPE OF THIS LOCAL LAW

This Local Law applies to the whole of the Municipal District except where it is apparent from its wording that it applies to a particular area or areas. Its provisions apply to the extent that they are not inconsistent with any Act, Regulation or Planning Scheme applicable to the Council or its Municipal District.

7. DEFINITIONS

In this Local Law, unless the context or subject-matter indicates otherwise the following words and phrases have the respective meanings assigned:

WORDS AND PHRASES

MEANING OR EXTENDED MEANING

Accessible to the Public

Means accessible to any member of the public without assistance from a person described in clause 3.2(b) or an employee or agent of such person.

Act

Means the Local Government Act 1989.

Authorised Officer

Means an Authorised Officer appointed under section 224 of the Act.

Chief Executive Officer	Means the person appointed by the Council to be its Chief Executive Officer or any person acting in that position.
Council	Means BAYSIDE CITY COUNCIL.
Council Land	Means any land either vested in or under the control of the Council including Roads, reserves, watercourses, reservations and the like.
Infringement Notice	Means an Infringement Notice issued by the Council or an Authorised Officer under this Local Law.
Municipal District	Means the Council's municipal district.
Nominated Officer	Means a person delegated by the Council to perform a function or exercise power conferred by this Local Law.
Notice to Comply	Means a Notice to Comply issued by the Council or an Authorised Officer under this Local Law.
Penalty Unit	Means a penalty unit under the Sentencing Act 1991, section 110 and/or Monetary Units Act 2004 of which currently fixes the value at \$100 per penalty unit and includes any amendments to that amount.
Permit	Means a Permit issued by the Council under this Local Law.
Permit Holder	Is a person to whom a Permit has been issued under this Local Law.
Private Land	Means any land which is not owned or occupied or under the control or management of a public body.
Road	Has the meaning ascribed to it in Section 3 of the Act and includes a public highway.
Senior Officer	Has the meaning ascribed to it in Section 3 of the Act.

PART 2 - ADMINISTRATION OF THIS LOCAL LAW

8. EXERCISE OF DISCRETIONS

- (1) In exercising any discretion contained in this Local Law, the Council will have regard to:
 - (a) the objectives of this Local Law;
 - (b) the guidelines, as appropriate, contained in Schedule 1; and
 - (c) any policies adopted by the Council from time to time.
- (2) The Council may from time to time prepare policies for use by the Council, Council staff and other persons for the purposes of the Local Law.
- (3) Policies prepared by the Council must not be inconsistent with the objectives of this Local Law or with any guidelines provided.
- (4) In preparing policies, the Council must have regard to the objectives of this Local Law and any relevant guidelines.

9. REGISTER OF DETERMINATIONS

- (1) Any determinations made or policies adopted by the Council for the purposes of this Local Law must be maintained by the Council in a register kept for that purpose.
- (2) The register kept for the purposes of this clause must be made available for inspection at the office of the Council during normal office hours.

10. POWER OF AUTHORISED OFFICER TO DIRECT – NOTICE TO COMPLY

LGA224
SCH2

The Chief Executive Officer or any Authorised Officer may, on becoming aware of a contravention of this Local Law, following consideration of all relevant circumstances, either:

- (1) Issue a warning;
- (2) Issue of Notice to Comply;
- (3) Issue an infringement notice;

- (4) Recommend court proceedings; or
- (5) Take no action whatsoever.

11. POWER TO OBTAIN NECESSARY INFORMATION

The Council, a Nominated Officer or Authorised Officer may require additional information in conjunction with an application for an exemption and for the purposes of administering and enforcing the provisions of this Local Law.

12. TIME TO COMPLY

A Notice to Comply must state the time within which the breach (to which the Notice to Comply relates) must be remedied.

13. REASONABLE TIME TO COMPLY

The time specified in a Notice to Comply served under this Local Law must be reasonable in the circumstances, and what will be reasonable will vary depending on the matters to be remedied, but should take into account, if applicable:

- (1) the amount of work to be performed in order to observe the Notice;
- (2) the degree of difficulty;
- (3) the availability of necessary materials or other necessary items;
- (4) climatic conditions;
- (5) the degree of risk or potential risk; and
- (6) any other relevant factor.

14. FAILURE TO ADHERE TO A NOTICE TO COMPLY

LGA225

A person who fails to remedy a situation in accordance with a Notice to Comply served on that person under this Local Law is guilty of an offence.

Penalty: 10 Penalty Units

15. POWER OF AUTHORISED OFFICERS TO ACT IN URGENT CIRCUMSTANCES

- (1) In urgent circumstances arising as a result of a failure to comply with this Local Law, an Authorised Officer may take action to remove, remedy or rectify the failure without the necessity to serve a written warning or Notice to Comply, or take other action as required, provided:
- (a) he or she considers the failure to be sufficiently urgent and that the time involved or difficulties associated with the serving of a Written Warning or Notice to Comply may place a person, or any animal, property or thing at risk or in danger;
- (b) wherever practicable, a Senior Officer is given prior notice of the proposed action; and
- (2) An Authorised Officer who takes action under sub-clause (1)(a) must ensure that as soon as practicable, a report of the action taken is submitted to a Senior Officer.
- (3) The action taken by an Authorised Officer under sub-clause (1)(a) must not extend beyond what is necessary to cause the immediate abatement of or to minimise the risk or danger involved.

SCH1(1)

16. POWER OF AUTHORISED OFFICER TO IMPOUND

- (1) If an Authorised Officer detects an animal or thing contrary to the provisions of this Local Law, and in the opinion of that Authorised Officer the continuation of that situation presents a potential hazard or risk to any person or property, the Authorised Officer may impound that animal or thing.
- (2) If an Authorised Officer has impounded an animal or other thing in accordance with this Local Law, the Council may refuse to release it until the appropriate fee or charge for its release has been paid to the Council.
- (3) As soon as possible after the impounding and where it is practicable to do so, the Authorised Officer will serve a Notice of Impounding in a form of Schedule 3 on the owner or persons responsible for the impounded animal or thing setting out the fees and charges payable and time by which the item must be retrieved.
- (4) If an impounded animal or thing is not retrieved within the time specified in the Notice of Impounding, an Authorised Officer may take action to dispose of the impounded animal or thing in accordance with the guidelines contained in Schedule 1.
- (5) If the identity or whereabouts of the owner or person responsible for the impounded animal or thing is unknown, the Authorised Officer must take

SCH3

SCH1(2)

reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with subclause (3) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded animal or thing.

- (6) Any proceeds from the disposal of an impounded animal or thing under this Local Law will be paid to the owner or the person who in the opinion of the Council appears to be authorised to receive the money less the reasonable costs and expenses incurred by the Council in the administration of this clause.
- (7) In the event that the person described in paragraph (5) cannot be identified or located within six (6) months of serving the Notice of Impounding, any proceeds described in that paragraph cease to be payable and may be retained for municipal purposes.

17. APPEALS

- (1) Any person who is aggrieved by any matter under this Local Law may make a written submission for consideration by the Council within twenty-eight (28) days of the date of the incident, notice or matter concerned, but the making of any submission will not in any way remove that person's obligation to act in accordance with any directions or notices which are applicable under this Local Law.
- (2) Sub-clause (1) does not confer a right for a person to make a submission under section 223 of the Act.

PART 3 – COMMUNITY PROTECTION

18. AEROSOL SPRAY PAINT CONTAINERS

(1) A person must not:

- (a) sell;
- (b) deliver;
- (c) give; or
- (d) cause to be sold, delivered or given

to a person who is under the age of eighteen (18) years any aerosol spray paint container unless the first mentioned person is:

- (i) a parent and the second mentioned person is his or her child;
- (ii) a guardian and the second mentioned person is his or her ward;
- (iii) an employer and the second mentioned person is his or her employee;
- (iv) the agent of an employer and the second mentioned person is the employee of that employer; or
- (v) a teacher and the second mentioned person is his or her pupil.

Penalty: 20 Penalty Units

PART 4 - FEES, CHARGES AND COSTS

19. SETTING FEES AND CHARGES

- (1) The Council may from time to time by resolution determine the fees and charges to apply under this Local Law and may include an administration or processing fee or charge. The Council must give public notice of its resolution to set or alter fees and charges.
- (2) Any licence fee fixed by Council must be fixed in the same way as a Permit fee or charge and may include a transfer fee.

20. DIFFERENTIAL OR STRUCTURED FEES AND CHARGES

In determining any fees and charges, the Council may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.

21. WAIVER ALTERATION TO FEES AND CHARGES

LGA113

The Council may waive, reduce or alter any fee or charge with or without conditions upon receipt of a written submission from the applicant stating reasons why any such fee or charge should be reconsidered.

PART 5 - PROCEDURES

22. EXEMPTIONS

- (1) A person may make written application to Council for an exemption from the provisions of Part 3 of this Local Law;
- (2) The Council may decide in its absolute discretion to exempt any person from the application of Part 3 of this Local Law either temporarily or permanently.

23. FALSE REPRESENTATION

A person who makes any false representation or declaration (whether oral or in writing) in, or who omits any relevant information from, any documentation relevant to this Local Law is guilty of an offence.

Penalty: 10 Penalty Units

24. UNSPECIFIED PENALTY

Except where otherwise indicated the penalty for breaches of this Local Law is ten (10) Penalty Units.

PART 6 – ENFORCEMENT AND PENALTIES

25. OFFENCES

- (1) Where any provision in this Local Law prohibits any act or thing, any person who contravenes such provision is guilty of an offence.
- (2) Where any provision in this Local Law prohibits any act or thing between specified hours of the day or night or during specified months of the year or on certain days or in or at specified locations or specified parts of those locations, any person who contravenes such provisions is guilty of an offence.
- (3) Where any provision in this Local Law requires that a person obtain an exemption before engaging in a particular activity, that person is guilty of an offence if that person engages in that activity unless the Council in its discretion has granted an exemption.
- (4) Where any exemption, granted under this Local Law contains conditions any person who contravenes or fails to comply with such a condition is guilty of an offence.
- (5) Where any provision in this Local Law requires an act or thing to be done, any person who contravenes such provision is guilty of an offence.

LGA115(2)

26. PENALTIES

Schedule 5 to this Local Law sets out penalties for Infringement Notice purposes which may be issued as an alternative to prosecution in respect of non-compliance with this Local Law where the Council or an Authorised Officer determines to proceed by Infringement Notice.

SCH5

27. INFRINGEMENT NOTICES

- (1) An Authorised Officer may serve an Infringement Notice in the form of Schedule 5 on a person whom the Authorised Officer believes has committed an infringement referred to in Schedule 4 requiring the person to pay the penalty for that offence within 28 days of the issue of the Infringement Notice.
- (2) If the Infringement Notice is not withdrawn and the person pays to the Council the amount referred to in the Infringement Notice within the period of 28 days or such further period as the Council or an Authorised

SCH5
SCH6

Officer may allow, no conviction will be recorded against that person for the alleged infringement;

- (3) If a person issued with an Infringement Notice makes a written representation, within 28 days of the issue of an Infringement Notice, to the Council, the Chief Executive Officer, Group Manager Infrastructure Services or to any other officer, the representation must be brought to the attention of the Nominated Officer.
- (4) The Nominated Officer may consider any written representations and any other relevant information and must consider any such material brought to his or her attention within 28 days of the issue of the Infringement Notice to which it relates.
- (5) Subject to clause 17, the decision of the Nominated Officer on any representations received will be final.
- (6) The Council or a Nominated Officer may at any time withdraw an Infringement Notice either as a result of consideration of any representations made or with a view to prosecuting for an offence.
- (7) Where an Infringement Notice is withdrawn, the person upon whom it was served is entitled to a refund of any payment that that person has made on the Infringement Notice.
- (8) If the penalty referred to in an Infringement Notice has been paid within 28 days of its issue and no representation has been received by the Council or its officers, no decision may be made to withdraw the Infringement Notice and prosecute the offence after the expiry of 28 days from the issue of the Infringement Notice.
- (9) Any withdrawal of an Infringement Notice may be served in accordance with section 234 of the Act. LGA234

28. DELEGATION

In accordance with Section 114 of the Act, the Council:

LGA114

- (1) delegates to the Chief Executive Officer, each Senior Officer and to any person for the time being acting for such persons all the powers, discretions, authorities and considerations of Council under this Local Law including (but not limited to) the powers, discretions and authority to issue or refuse Permits, fix conditions and durations relevant to such Permits, cancel Permits, require additional information, apply guidelines of policies of Council, consider appeals and waive the need for any Permit or waive or fix or reduce any fee or charge or to do any act, matter or thing necessary or incidental to the performance or exercise of any function or power by the Council;

- (2) delegates to each Senior Officer and any Nominated Officer and to any person for the time being acting for these persons the power to issue or refuse Permits and apply conditions, exercise discretions, require additional information and apply guidelines or policies of Council in respect of Permit applications, exemptions and waivers; and
- (3) delegates to each Authorised Officer the powers, discretions and authorities to act on behalf of the Council in exercising any discretion of the Council in accordance with the guidelines specified in this Local Law, the issue of Infringement Notices and the undertaking of prosecutions.

SCHEDULE 1 - GUIDELINES

BAYSIDE CITY COUNCIL

LOCAL LAW NO. 5 - CONTROL OF SALE OF AEROSOL SPRAY PAINT CONTAINERS

SCHEDULE 1

GUIDELINES

1. URGENT CIRCUMSTANCES

What is regarded as urgent circumstances will depend on the circumstances of each situation. Factors to be taken into consideration may include:

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- (1) Where:
 - (a) the person by whose default, permission or sufferance the situation has arisen; or
 - (b) the owner or the occupier of the premises or property affected is not known or cannot be found.
- (2) Where, in the opinion of the Authorised Officer, there exists an urgent risk or threat to:
 - (a) public health;
 - (b) public safety;
 - (c) the environment; or
 - (d) animal welfare.

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2. DISPOSAL OF IMPOUNDED ITEMS

In respect of impounded items, the Council's policy for the disposal of an impounded animal or things is as follows:

- (1) Where the item is declared by the Nominated Officer to have no saleable value, it may be disposed of in the most economical way, as determined by the Nominated Officer.
- (2) Where the item is declared by the Nominated Officer to have some saleable value, the item may be disposed of by tender, public auction or private sale, but failing sale, may be given away or disposed of at the discretion of that Nominated Officer.

SCHEDULE 2 - NOTICE TO COMPLY

BAYSIDE CITY COUNCIL

**LOCAL LAW NO. 5 - CONTROL OF SALE OF AEROSOL SPRAY
PAINT CONTAINERS**

SCHEDULE 2 (Clause 10)

NOTICE TO COMPLY

TO: _____
(Name)

(Address)

The following constitutes a breach under clause _____ of the Council's Control of Sale of Aerosol Spray Paint Containers Local Law No. 5. To remedy the breach you must carry out the following work, within _____ days from the date of this notice.

Work to be done _____

You should contact the undersigned at the Municipal Offices during business hours for any further information about this Notice.

If you fail to comply with this Notice you will be guilty of an offence and liable for payment of the penalty of \$_____ (penalty) for the offence. Additionally, an Authorised Officer may proceed to have any required work carried out, in which case, you will be liable for the cost of such works in addition to the above penalty.

Date _____ (Insert Date) _____ (Name of Authorised Officer)

Telephone _____ (Signature of Authorised Officer)

NOTE: If this notice relates to a contravention of a Permit there is no compliance with the Notice, the Permit may be cancelled. If you do not wish to have the Permit cancelled you should comply with the directions in this Notice or show cause to the Council in writing why the Permit should not be cancelled.

SCHEDULE 3 - NOTICE OF IMPOUNDING

BAYSIDE CITY COUNCIL

**LOCAL LAW NO. 5 - CONTROL OF SALE OF AEROSOL SPRAY
PAINT CONTAINERS**

SCHEDULE 3 (Clause 16)

NOTICE OF IMPOUNDING

TO: _____
(Name)

(Address)

The following thing(s) has/have been impounded in accordance with clause 16 of the Council's Control of Sale of Aerosol Spray Paint Containers Local Law No. 5.

(Describe item(s) impounded) _____

You may collect the item(s) by attending at the municipal offices during normal business hours and paying the following:

Details of Fees and Charges	\$
_____	_____
_____	_____
_____	_____
_____	_____
TOTAL	\$ _____

If you fail to collect the item(s) and pay the required fees and charges by _____ (date), the Council's Authorised Officer will proceed to dispose of the item(s) in accordance with Council policy.

Date _____ (Insert Date) _____ (Name of Authorised Officer)

Telephone _____ (Signature of Authorised Officer) _____

**SCHEDULE 4 –
PENALTIES FOR INFRINGEMENT NOTICE PURPOSES
IN RESPECT OF NON COMPLIANCE WITH THIS
LOCAL LAW**

BAYSIDE CITY COUNCIL

**LOCAL LAW NO. 5 - CONTROL OF SALE OF AEROSOL SPRAY
PAINT CONTAINERS**

SCHEDULE 4 (Clause 24)

**PENALTIES FOR INFRINGEMENT NOTICE PURPOSES IN RESPECT OF
NON COMPLIANCE WITH THIS LOCAL LAW**

Clause		Penalty Units
14	Failure to adhere to a Notice to Comply	5
18(1)	Sell, deliver, give, or cause to be sold, delivered or given to a person under the age of eighteen years an aerosol spray paint container.	5
23	Make a false representation or declaration oral or verbal or omission of relevant information from documentation relevant to this Local Law	5
24	Failure to comply with a requirement of the Local Law for which no other infringement penalty specified	5

SCHEDULE 5 - INFRINGEMENT NOTICE

BAYSIDE CITY COUNCIL

LOCAL LAW NO. 5 - CONTROL OF SALE OF AEROSOL SPRAY PAINT CONTAINERS

SCHEDULE 5

INFRINGEMENT NOTICE

Date of Notice _____ No. of Notice _____

To: Surname of _____

Organisation _____

Other Names _____

Address _____

Reg No. of any Vehicle _____

State _____

I, _____ (full name of Authorised Officer) being a duly authorised officer of the above Council have reason to believe that you have committed an offence against the Local Laws of the Council. The nature of the alleged offence and the amount of the penalty is indicated below:

Local Law Number	Clause Number	Nature of Infringement	Applicable* Penalty Units
()			
()			

Other particulars of alleged offence:

Date: _____ Time: _____ Location: _____

If you pay the penalty indicated within 28 days from the date of this notice to BAYSIDE CITY COUNCIL:

by CHEQUE or MONEY ORDER for the FULL AMOUNT posted to
PO Box 27, Sandringham 3191

by CHEQUE, MONEY ORDER or CASH to the Corporate Centre 76 Royal Avenue,
Sandringham 3191

this matter will not be brought to Court and no conviction will be recorded.

You are entitled to disregard this infringement notice and defend the prosecution for the offence in Court.

Should you wish to make any submission concerning this infringement notice contact should be made within 28 days.

(Signed by Authorised Officer)

CERTIFICATION OF LOCAL LAW NO. 5

This is to certify that the matter above writing contained on _____ pages of paper is a true copy of the Local Law of the **BAYSIDE CITY COUNCIL** and that we informed ourselves of the legislative requirements necessary to giving validity to such Local Law and as to their observance and belief that such requirements have been fulfilled.

And we further certify that such Local Law came into force on the

Sealed in our presence this

Mayor

Councillor

Chief Executive Officer _____

Seal