

<p><b>LOCAL LAW NO. 28</b></p> <p><b>(CONTROL OF ADVERTISING)</b></p>
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**TABLE OF CONTENTS**

**PART 1 - PRELIMINARY.....3**

1. Citation.....3

2. Commencement.....3

3. Object.....3

4. Relationship with Other Laws.....3

5. Definitions.....3

**PART 2 - LOCAL LAW NO. 1 (ADMINISTRATION).....4**

6. Administration Local Law .....4

**PART 3 - EXHIBITION OF ADVERTISEMENTS.....4**

7. Unlawful Exhibition of Advertisements.....4

**PART 4 - PERMITTED ADVERTISEMENTS.....4**

8. Classification of Advertisements.....4

9. Conditions on which Advertisements are Classified as Permitted Advertisements.....5

10. Compliance with Conditions of Classification.....5

**PART 5 - ADVERTISING APPROVALS.....5**

11. Application for Approval .....5

12. Criteria for Approval.....5

13. Term of Approval.....6

14. Conditions of Approval.....7

15. Compliance with Conditions of Approval.....7

**PART 6 - ENFORCEMENT.....7**

16. Obligation to Maintain .....7

17. Removal of Advertisements Unlawfully Exhibited .....7

18. Notice to Remove in Other Cases .....8

19. Council’s Powers on Default.....8

20. Removal without Notice.....8

21. Powers of Entry and Cost Recovery.....9

**PART 7 - MISCELLANEOUS.....9**

- 22. Local Government Advertisements.....9
- 23. Interference with Council Advertisements.....9
- 24. General Defence to Charge of Unlawful Exhibition of Advertisement .....9

**PART 8 - LOCAL LAW POLICIES.....9**

- 25. Local Law Policies .....9

## **PART 1 - PRELIMINARY**

### **1. Citation**

This local law may be cited as Local Law No. 28 (Control of Advertising).

### **2. Commencement**

This local law commences on the date on which a notice of the making of this local law is published in the gazette.

### **3. Object**

The object of this local law is to ensure that advertisements and associated structures complement or, at least, do not unreasonably detract from, desirable characteristics of the natural and built environment in which the advertisements are exhibited.

### **4. Relationship with Other Laws**

This local law is in addition to, and does not derogate from other laws about the control of advertising, including but not limited to:

- (a) the Integrated Planning Act 1997; and
- (b) the Transport Infrastructure Act 1994.

### **5. Definitions**

In this local law:

**"advertisement"** means an advertisement or sign that is visible from a road or other public place and includes a structure that forms part of the advertisement or sign, or to which it is attached, or on which it is exhibited;

**"advertiser"** means a person:

- (a) by whom an advertisement is exhibited; or
- (b) whose business or place of business is advertised by the advertisement;

and includes a person who manages and controls, or has power to manage or control, the place in which the advertisement is exhibited;

**"environmental protection policy"** means an environmental protection policy under the *Environmental Protection Act 1994*<sup>1</sup>;

**"permitted advertisement"** means an advertisement classified as a permitted advertisement under Part 3 (Permitted Advertisements).

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<sup>1</sup> Under Chapter 2 of the *Environmental Protection Act 1994*, the Minister responsible for the administration of that Act may prepare environmental policies about the environment or anything that affects or may affect the environment (See section 24 of that Act).

## **PART 2 - LOCAL LAW NO. 1 (ADMINISTRATION)**

### **6. Administration Local Law**

- (1) This local law must be read with Local Law No. 1 (Administration).
- (2) Where there is an inconsistency between this local law and Local Law No. 1 (Administration), this local law will apply.

## **PART 3 - EXHIBITION OF ADVERTISEMENTS**

### **7. Unlawful Exhibition of Advertisements**

- (1) An advertiser must not exhibit an advertisement in the Area unless:
  - (a) the advertisement is a permitted advertisement; or
  - (b) the advertiser has an approval for the exhibition of the advertisement from the Council.
- (2) If an advertiser exhibits an advertisement in contravention of subsection (1), the advertiser is guilty of an offence.

Maximum penalty-50 penalty units.

## **PART 4 - PERMITTED ADVERTISEMENTS**

### **8. Classification of Advertisements**

- (1) The Council may, by local law policy:
  - (a) classify advertisements by reference to criteria stated in the local law policy as permitted advertisements; or
  - (b) vary or revoke an earlier classification under this section.
- (2) The classification of advertisements as permitted advertisements may be based on 1 or more of the following criteria:
  - (a) the nature, dimensions, design, structural form or other physical characteristics of the advertisement;
  - (b) the content of the advertisement;
  - (c) the part of the Area in which the advertisement is to be exhibited;
  - (d) the positioning of the advertisement in relation to:
    - i) a lot boundary; or
    - ii) a building; or
    - iii) a road, footpath or other thoroughfare; or
    - iv) another physically identifiable point or line;

- (e) other criteria stated in the relevant local law policy.

## **9. Conditions on which Advertisements are Classified as Permitted Advertisements**

- (1) The Council may, by local law policy, prescribe conditions on which advertisements of a particular class are classified as permitted advertisements.
- (2) The conditions may, for example:
  - (a) require the advertiser to give the Council written notice containing specified information before, or within a specified period after, the advertisement is exhibited;
  - (b) require that a registration number allocated by the Council be affixed to the advertisement for as long as it is exhibited.

## **10. Compliance with Conditions of Classification**

If an advertiser exhibits a permitted advertisement, and a condition on which the advertisement is classified as a permitted advertisement is not complied with, the advertiser is guilty of an offence.

Maximum penalty-50 penalty units.

## **PART 5 - ADVERTISING APPROVALS**

### **11. Application for Approval**

- (1) An application for an approval for the proposed exhibition of an advertisement in the area must set out:
  - (a) full details of the advertisement, including its contents, its design, its dimensions and its construction; and
  - (b) full details of when, where and how the advertisement is to be exhibited;
  - (c) any other information required by a local law policy.
- (2) If a development approval is required for the advertisement under the *Integrated Planning Act 1997*, the application must be accompanied by evidence that the relevant approval has been granted, or an application for the relevant approval has been made.
- (3) If an advertisement is to be exhibited in a place that is not controlled by the advertiser, the application must be accompanied by the written consent of the owner and occupier of the place.

### **12. Criteria for Approval**

- (1) In deciding whether to grant an approval for an advertiser to exhibit an advertisement, the Council must have regard to:
  - (a) relevant submissions made by interested persons; and
  - (b) the public interest; and

- (c) relevant Commonwealth, State or Council plans, proposals or agreements affecting the part of the area in which the advertisement is to be situated.
- (2) The Council may only grant an approval for an advertiser to exhibit an advertisement if:
- (a) the advertisement is structurally sound; and
  - (b) the advertisement causes no significant obstruction of, or distraction to, vehicular or pedestrian traffic<sup>2</sup>; and
  - (c) the exhibition of the advertisement is consistent with applicable environmental protection policies; and
  - (d) the dimensions of the advertisement bear a reasonable relationship to the dimensions of surrounding buildings and lots so that:
    - i) its presence is not unduly dominating or oppressive; and
    - ii) it does not unreasonably obstruct existing views; and
  - (e) the advertisement is consistent, in colour and appearance, with buildings and natural features of the environment in which it is to be situated; and
  - (f) the advertisement is in other respects consistent with the character and values of the environment in which it is to be situated; and
  - (g) the approval is consistent with the local law policies.
- (3) The Council may, by local law policy:
- (a) prescribe criteria Council must have regard to in deciding whether to grant or refuse an approval for the exhibition of advertisements; or
  - (b) prohibit specified classes of advertisements, or prohibit the exhibition of advertisements in circumstances of a specified class.

### **13. Term of Approval**

- (1) An approval is granted for a term specified in the approval.
- (2) The Council may, from time to time, on application by the advertiser, renew an approval for a further term.
- (3) The term for which an approval is granted or renewed is to be:
  - (a) fixed as required by a relevant local law policy; or
  - (b) in the absence of a relevant local law policy - decided by the Council when it grants the approval or the renewal.

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<sup>2</sup> A Council in granting a permit to an advertiser to exhibit an advertisement is bound by section 41 of the *Transport Infrastructure Act 1994*, to the extent to which that section applies

#### **14. Conditions of Approval**

- (1) An approval may be granted on conditions the Council considers appropriate.
- (2) The conditions may, for example:
  - (a) regulate the materials out of which the advertisement is to be constructed; or
  - (b) regulate the dimensions of the advertisement; or
  - (c) require the periodic painting or external treatment of the advertisement; or
  - (d) require the securing of the advertisement in a specified way; or
  - (e) regulate the positioning of the advertisement in relation to the boundaries of land, or a building or structure, on which it is situated or a road or other public place; or
  - (f) regulate how the advertisement is to be illuminated and the intensity of illumination.
- (3) However, the conditions of the approval must be consistent with the conditions of any statutory authorisation or approval for the establishment of the advertisement.
- (4) The Council may, by local law policy, prescribe conditions that may be imposed on an approval.

#### **15. Compliance with Conditions of Approval**

The advertiser must ensure that the conditions of approval are complied with.

Maximum penalty-50 penalty units.

### **PART 6 - ENFORCEMENT**

#### **16. Obligation to Maintain**

- (1) If Council is of the opinion that an advertisement is not in good order and repair, or is unsightly, the Council may, by notice in writing, require the advertiser to carry out specified work to put the advertisement into good order or repair, or to remedy the unsightly condition of the advertisement.
- (2) An advertiser must comply with a notice under subsection (1) within the time allowed in the notice.

Maximum penalty-50 penalty units.

- (3) However, if an advertiser removes an advertisement within the time allowed in the notice, the advertiser is taken to have complied with the notice.

#### **17. Removal of Advertisements Unlawfully Exhibited**

- (1) If an advertisement is exhibited in contravention of this local law or a condition imposed under this local law, the Council may, by written notice to the advertiser,

require the advertiser to remove the advertisement within a time specified in the notice.

- (2) The Council may withdraw a notice under this section if, within the time allowed for removal of the advertisement, the advertiser obtains the necessary approval for exhibition of the advertisement or takes other necessary action to ensure that the advertisement is lawfully exhibited.
- (3) An advertiser must comply with a notice under subsection (1) within the time allowed in the notice.

Maximum penalty-50 penalty units.

#### **18. Notice to Remove in Other Cases**

- (1) If:
  - (a) the character of a particular part of the area changes as a result of commercial or residential development or for another reason, and the exhibition of an advertisement is no longer consistent with the character of the relevant part of the area; or
  - (b) an advertisement is exhibited in a particular part of the area and the advertisement, in conjunction with other advertisements exhibited by the same or other advertisers, seriously detracts from the character of the relevant part of the area,

the Council may, by written notice, require the advertiser to remove the advertisement.

- (2) An advertiser must comply with a notice under subsection (1) within the time allowed in the notice.

Maximum penalty-50 penalty units.

#### **19. Council's Powers on Default**

If a person fails to comply with a notice under this Part within the time allowed in the notice, the Council may remove and dispose of the advertisement.

#### **20. Removal without Notice**

- (1) If:
  - (a) an advertisement is exhibited in contravention of this local law or a condition imposed under this local law and there are, in the opinion of the Council, adequate reasons for removing the advertisement immediately; or
  - (b) an advertisement creates, in the opinion of the Council, a risk to life or property,

the Council may remove and dispose of the advertisement.

## **21. Powers of Entry and Cost Recovery**

- (1) The Council may enter land to carry out work under this Part:
  - (a) under section 1066 of the Act, if the advertiser is the owner or occupier of the relevant land; or
  - (b) under section 1070 of the Act, if the advertiser is not the owner or occupier of the relevant land<sup>3</sup>.
- (2) If the advertiser is the owner of the relevant land, the amount properly and reasonably incurred by the Council in having work carried out under this Part is recoverable (together with interest) under sections 1066, 1067 and 1068 of the Act.
- (3) If the advertiser is not the owner of the relevant land, the amount properly and reasonably incurred by the Council is recoverable as a debt from the advertiser together with interest on the same basis as applies to an owner of land under section 1067 of the Act.<sup>4</sup>

## **PART 7 - MISCELLANEOUS**

### **22. Council Advertisements**

The Council may itself exhibit advertisements without approval under this local law.

### **23. Interference with Council Advertisements**

A person must not remove, alter, deface or otherwise interfere with an advertisement exhibited by the Council.

Maximum penalty-50 penalty units.

### **24. General Defence to Charge of Unlawful Exhibition of Advertisement**

If a person is charged with exhibiting an advertisement in contravention of this local law, it is a defence for the defendant to prove that the advertisement was exhibited without the defendant's knowledge or consent.

## **PART 8 - LOCAL LAW POLICIES**

### **25. Local Law Policies**

The Council may make local law policies in relation to those matters about which this local law specifically allows for the making of local law policies.

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<sup>3</sup> A magistrate may make an order for entry to the land under section 1063 (Order on occupier who refuses entry) if the occupier refuses to permit entry

<sup>4</sup> Section 1067(2) of the Act provides for the payment of interest on the same basis as for an overdue rate.

## **CERTIFICATION**

This and the preceding 9 pages bearing my initials is a certified copy of Local Law No. 28 - Control of Advertising made, in accordance with the provisions of the Local Government Act 1993, by the Cairns City Council by resolution dated 17 January 2000.

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Terrence Robert Leslie Moore  
**Chief Executive Officer**