

# CITY OF BELMONT

## URBAN ENVIRONMENT AND NUISANCE LOCAL LAW

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**SCHEDULE 1**

**LOCAL GOVERNMENT ACT 1995**

**CITY OF BELMONT**

**URBAN ENVIRONMENT AND NUISANCE LOCAL LAW**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the *City of Belmont* resolved on the 13<sup>th</sup> August 2001 to make the following local law.

**PART 1 - PRELIMINARY**

**1.1 Citation**

This local law may be cited as the City of Belmont Urban Environment and Nuisance Local Law.

**1.2 Application**

This local law applies throughout the district.

**1.3 Definitions**

In this local law unless the context otherwise requires -

"**Act**" means the *Local Government Act 1995*;

"**CEO**" means the chief executive officer of the local government;

"**Council**" means the council of the local government;

"**district**" means the district of the local government;

"**local government**" means the *City of Belmont*;

"**local government property**" means anything except a thoroughfare -

(a) which belongs to the local government;

(b) of which the local government is the management body under the *Land Administration Act 1997*; or

(c) which is an "otherwise unvested facility" within section 3.53 of the Act;

"**lot**" has the meaning given to it in the *Town Planning and Development Act 1928*;

"**nuisance**" includes -

(a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;

(b) an unreasonable interference with the use and enjoyment of a person in her or his ownership or occupation of land; and

(c) interference which causes material damage to land or other property on the land affected by the interference;

"**person**" does not include the local government;

"**Regulations**" means the *Local Government (Functions and General) Regulations 1996*; and

"**vehicle**" includes -

(a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise;

(b) an animal being ridden or driven,  
but excludes -

(c) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and

(d) a pram, a stroller or a similar device.

**1.4 Repeal**

The City of Belmont Local Law Relating to Old Refrigerators and Cabinets published in the Government Gazette of 31 August 1962 and

amended in the Government Gazettes of 5 September 1975 and 24 April 1980, is repealed.

## **PART 2 - GENERAL - NOISE, LIGHT AND VIBRATIONS**

### ***Division 1 - Amusements***

#### **2.1 Definitions**

In this Division -

"Amusement" means any thing usually conducted for amusement at a fair, a carnival or a show, whether conducted at a fair, a carnival or a show or elsewhere.

#### **2.2 Nuisance**

A person shall not provide or conduct any amusement on land so as to create or be a nuisance to any owner or occupier of land in the district.

#### **2.3 Abatement by authorized person**

Subject to Subdivision 3 of Division 3 of Part 3 of the Act, an authorized person may enter on any land where an amusement is provided or conducted and may do any act or thing reasonably required to abate a nuisance referred to in clause 2.2.

### ***Division 2 - Light***

#### **2.4 Emission or reflection of light**

- (1) Where artificial light is emitted or reflected from anything on a lot so as to illuminate land outside the lot to more than 50 lux, then every owner and occupier of the lot commits an offence.
- (2) Where natural light is reflected from anything on a lot so as to create or be a nuisance to any -
  - (a) owner or occupier of land; or
  - (b) person using a thoroughfare as a thoroughfare,then every owner and occupier of the lot commits an offence.

#### **2.5 Use of floodlights**

An owner or occupier of a lot on which floodlights or other exterior lights are erected or used shall not allow the floodlights or other exterior lights to shine directly onto an adjoining lot.

#### **2.6 Notice**

The local government may give a notice to the owner or occupier of a lot -

- (a) requiring that any reflective surfaces creating a nuisance within clause 2.4(2) be painted or otherwise treated so as to abate the nuisance; and
- (b) on which floodlights or other exterior lights are erected, requiring that -
  - (i) the hours of use of the lighting be limited to the hours specified in the notice; or
  - (ii) the direction in which the lights are shining be altered as specified in the notice.

### ***Division 3 - Truck noise from residential land***

## **2.7 Truck noise from residential land**

- (1) A person shall not start or drive a truck on land zoned, approved or used for residential purposes between the hours of 11pm and 7am on the following day without first obtaining the written consent of the local government.
- (2) In this clause, a truck means a vehicle having a tare in excess of 3,000 kgs.

## **PART 3 - DISPOSING OF DISUSED REFRIGERATORS**

### **3.1 Disposing of disused refrigerators or similar containers**

A person shall not place, leave or dispose of a disused refrigerator, ice-chest, ice-box, trunk, chest or other similar article having a compartment which has a capacity of 0.04 cubic metres or more on any land without first -

- (a) removing every door and lid and every lock, catch and hinge attached to a door or lid; or
- (b) rendering every door and lid incapable of being fastened.

## **PART 4 - OBJECTIONS AND APPEALS**

### **4.1 Application of Part 9 Division 1 of the Act**

When the local government makes a decision under clause 2.6 or 2.7 (1) the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

## **PART 5 - ENFORCEMENT**

### ***Division 1 - Notices given under this local law***

#### **5.1 Offence to fail to comply with notice**

Whenever the local government gives a notice under this local law requiring a person to do any thing, if a person fails to comply with the notice, that person commits an offence.

#### **5.2 Local government may undertake requirements of notice**

Where a person fails to comply with a notice referred to in clause 5.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

### ***Division 2 - Offences and penalties***

#### ***Subdivision 1 - General***

#### **5.3 Offences and general penalty**

- (1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and

if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

**Subdivision 2 - Infringement notices and modified penalties**

**5.4 Prescribed offences**

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that -
  - (a) commission of the prescribed offence is a relatively minor matter; and
  - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

**5.5 Form of notices**

For the purposes of this local law -

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

**SCHEDULE 1**

**PRESCRIBED OFFENCES**

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>MODIFIED PENALTY \$</b>
2.2	Conducting an amusement so as to create a nuisance	100
2.4 (1)	Emitting light of more than 50 lux	100

2.5	Erection or use of lights other than in accordance with requirements	100
2.7 (1)	Starting or driving a truck on residential land without consent	100
3.1	Disposing of disused refrigerator or similar container with door or lid that can be fastened	250
5.1	Failure to comply with notice	100

Dated the thirteenth day of August 2001.

The Common Seal of the )  
City of Belmont )  
was affixed by )  
authority of a resolution )  
of the Council in the )  
presence of - )

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P R PASSERI,  
CEO

MAYOR

B R GENONI,