

Policy

Applications for Exemption as to Limitations on the Keeping of Dogs



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New review date:	22/08/2020
Legal Authority:	Local Government Act Section 2.7 – The Role of Council Dog Act 1976 Section 26 – Limitation as to numbers
Directorate	Corporate and Engineering Services
Department	City Assist
Related documents	Acts/Regulations Dog Act 1976 (WA) Animal Welfare Act 2002 (WA) Plans/Strategies Corporate Business Plan 2017 – 2022 Policies Nil Work Instructions D14/25561[v3] – RS19 - Dog Control – Section 26 Application Other documents City of Kwinana Dogs Local Law 2010 (as amended 2016)

Policy:

1. Title

Applications for Exemption as to Limitations on the Keeping of Dogs.

2. Purpose

To provide conditions and guidelines for the assessment and approval of applications made under s 26(3) of the Act; where an exemption is sought as to the limitations on the number of dogs to be kept upon a premises as specified by clause 3.2 of the local law.

3. Scope

The City of Kwinana will sustain its delivery of compliance services to the community, through processing requests initiated under provisions made by the Act; and through providing a process for assessing such requests in a manner which is compliant with current legislation. The limitations to this scope are dictated by the Act and the local law.

4. Definitions

For the purpose of ensuring current legislative compliance, the definitions applicable to this policy are to be addressed by the relevant legislation. Any word which is not defined below is taken to have its dictionary definition.

4.1 General Definitions

- CEO means *the City of Kwinana's Chief Executive Officer*
- local law means *the City of Kwinana Dogs Local Law 2010 (as amended)*

4.2 Definitions given by s 3(1) of the Act

- *dangerous dog means a dog that is –*
 - a) a dangerous dog (declared); or
 - b) a dangerous dog (restricted breed); or
 - c) a commercial security dog.
- *effectively confined means –*
 - a) in relation to keeping a dog in premises comprising a mobile home, means the mobile home is designed and constructed in a way that

enables an occupant to prevent the dog from escaping the mobile home; and

- b) in relation to keeping a dog in or at other premises, or in any outdoor area of those premises, means the premises or area is bounded by a fence or barrier of a standard sufficient to prevent the dog from escaping.

- *microchip means an identification device of a prescribed type that –*

- a) is capable of being implanted into a dog; and
- b) is designed to record information in a way that can be electronically retrieved.

- *microchipped means implanted with a microchip in a prescribed manner.*

- *mobile home means caravan or campervan –*

- a) that is ordinarily used for human habitation; and
- b) that is permanently or semi-permanently stationary in a single location.

- premises shall, for the purpose of determining who is the occupier, be taken to refer to *any land or building, or part of any land or building, that is or is intended to be occupied as a separate residence from any adjacent tenement, and includes a mobile home.*

4.3 Definitions given by clause 1.6 of the local law

- Act means *the Dog Act 1976 (WA)*.
- authorised person means *a person authorised by the local government to perform all or any of the functions conferred on an authorised person under the local law and includes a person appointed under section 29(1) of the Act.*

5. Policy Statement

5.1 Empowerment of policy

Clause 3.2(2) of the local law provides that the maximum number of dogs that may be kept upon any premises is two (2) dogs over the age of three months.

Section 26(3) of the Act provides that where a local law is adopted by the local government that utilises the powers conferred by the Act to limit the number of dogs to be kept upon a premises; the local government may grant an exemption in respect of those premises.

The exemption may be subject to conditions specified by the local government and is subject to the relevant provisions of the Act and the local law. This policy shall specify those conditions, for the purposes of assessing s 26(3) exemption applications received.

5.2 Periods of approval sought

There shall be two (2) time periods for which an exemption may be sought by the applicant -

- a) a temporary exemption approval for a period of no longer than six (6) calendar months from the date of approval; or
- b) a permanent exemption approval.

5.3 Method of application

Application for an exemption shall be made to the City of Kwinana via the approved application form. The application form must be completed in full with all declarations made to be considered valid.

5.4 Conditions for approval of exemption

- 5.4.1 The applicant must not possess any prior criminal convictions, or more than two (2) substantiated complaints made against them under the –
 - a) Dog Act 1976 (WA);
 - b) Animal Welfare Act 2002 (WA); or
 - c) City of Kwinana Dogs Local Law 2010 (as amended).

A complaint is 'substantiated' if compliance action was taken and recorded by an authorised person (including the issuing of warnings).

- 5.4.2 The premises in which the dogs are to be kept must not be a mobile home.

- 5.4.3 The premises upon which the dogs are to be kept is capable of effectively confining the dogs at all times, and meets the following criteria:

- a) all gates, fences, barricades, walls, or otherwise of which enclose the area of the premises in which the dogs are to be confined are to comply with the City of Kwinana Fencing Local Law 2016; so that the fence is of a height equal to 1.8 metres or greater if permitted, have a ground clearance gap of no greater than 5 centimetres, and possess gaps of no greater than 5 centimetres between fencing panels;

- b) all gates or doors allowing access to the area of the premises which confines the dogs to be kept, possess at a minimum, a functioning latch style or key lock system and at least one functioning deadbolt lock (per access point);
- c) all boundaries surrounding the area of the premises which confines the dogs to possess sufficient ground cover material to prevent digging. Sufficient ground cover may include;
 - natural or artificial turf;
 - brick, tile or similar paving material;
 - concrete or similar solid compounds; or
 - decking with no greater than 5 centimetres gap between decking boards; and
- d) the area in which the dogs are to be confined is to be of sufficient size, for the purposes of the dog's wellbeing.

Sufficient size is determined by the largest dog to be kept upon the property and is deemed to be;

- for the keeping of dogs under 40 centimetres (snout- tail); a confined area of no less than 20 meters squared; or
- for the keeping of dogs 40 centimetres (snout-tail) and over; a confined area of no less than 45 meters squared.

5.4.4 The applicant must provide a statement of intent outlining the reasons why an approval for exemption is sought.

5.4.5 All dogs over the age of 3 months must be microchipped and registered within the State of Western Australia, and provide documentary proof.

5.4.6 The applicant must not keep any dangerous dogs, as defined by the Act, upon the premises.

5.4.7 The applicant must not intend to keep more than six (6) dogs upon the premises.

5.4.8 The exemption must not cause the breach of any provision of any existing legislation, including the City of Kwinana's Town Planning Schemes and policies¹.

¹ i.e. parts of LedaSee Schedule 1 – Special Residential Zones, Local Planning Scheme No 2.

- 5.4.9 The applicant should give consent to public consultation being sought in regards to their application; including but not limited to the disclosure of the breed and quantity of dogs proposed to be kept, as well as the address in which the application applies to.

The consultation shall be conducted via written correspondence to nearby residences subject to the following criteria;

- a) a radius of 100 metres surrounding the applicable premises, when that premises is within a residential or special residential zone; or
- b) a radius of 200 metres surrounding the applicable premises, when that premises is within a special rural zone; and
- c) in respect to sub clauses (a) and (b); at a minimum every residence with cadastral boundaries abutting the boundaries of the applicable premises.

The public consultation period will accept submissions for a period of 21 days, commencing from the last date on which the written correspondence in this clause was issued. All submissions will be presented to the CEO for assessment, and the weighting that any submission has upon the decision is at the discretion of the CEO.

- 5.4.10 The applicant shall give express consent for an authorised person to inspect the premises and dogs to be kept; for the purpose of assessing the conditions of approval set by clauses 5.4.1 – 5.4.9.

- 5.4.11 Variations to any of the conditions for approval of exemption under clause 5.4 of this policy may be sought via written submission to the CEO and are subject to approval at the CEO's discretion.

5.5 Fees and charges

The fees and charges pertaining to applications made for exemption are determined annually by the City of Kwinana and are contained within the City of Kwinana's Schedule of Fees and Charges.

5.6 Grant of approval

The CEO may approve an application for exemption under section 26(3) of the Act to keep more than the prescribed number of dogs at a premises;

- (a) if all conditions stipulated by the policy; and
- (b) all requirements of the relevant legislation; are met to the CEO's satisfaction.

5.7 Granted approvals to be subject to conditions

Any approval for exemption granted by the City of Kwinana shall be subject to the following conditions; noting that variation of conditions may be made at the discretion of the CEO;

- (a) the approval shall only apply to the premises and dogs specified in the notice of approval;
- (b) the approval for exemption will be effectively revoked if any of the dogs specified in the approval are no longer housed at that premises;
- (c) if the applicant wishes to keep a subsequent dog which is not specified in the approval, or wishes to change address; a new application for exemption must be submitted with any new fees applicable;
- (d) approval for exemption under section 26 of the Act, may not be held concurrently with a license for an approved kennel establishment at the same premises; and
- (e) approval is subject to all conditions described at clause 5.4 being sustained for the entire duration of the exemption.

5.8 Revocation and variation of approval

The CEO possesses full discretionary power to revoke or vary the approval of exemption at any time consistent with this policy and relevant legislation.

5.9 Review of decisions

Under section 26(5) of the Act, any person who is aggrieved by the refusal or revocation of an exemption or, the conditions imposed by this policy; may apply to the local government for a review of the decision. This application for a review cannot be made later than the expiry of a period of 28 days after the day on which a notice of the decision is served on the person affected by that decision.

6. Financial/Budget Implications

Minor revenue will be generated as a result of application fees and charges. Expenditure will be incurred through resources allocated to receiving and assessing applications made to the City.

7. Asset Management Implications

No specific asset management implications have been identified.

8. Environmental Implications

No specific environmental implications have been identified.

9. Strategic/Social Implications

Plan	Outcome	Objective
Corporate Business Plan 2017 - 2022	Business Performance	5.1 An active and engaged Local Government, focussed on achieving the community's vision

10. Occupational Safety and Health Implications

Authorised persons may be exposed to adverse conditions when conducting inspections of a premises and dogs for the purposes of assessing an application.

11. Risk Assessment

A risk assessment conducted as part of the policy review has indicated that the risk to the City by residents aggrieved by the City not being able to allow exemptions from the restrictions imposed on the keeping of dogs under the Dog Act 1976 is high.

It is assessed that the risk rating following the implementation of this policy would result in a risk rating of low.

Note: Changes to References may be made without the need to take the Policy to Council for review.