



CITY OF MITCHAM

LOCAL GOVERNMENT LAND BY-LAW 2022

By-law No. 3 of 2022

CONSOLIDATED AT 6 July 2023

A By-law to manage and regulate the access to and use of Local Government land (other than roads), and certain public places.

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PART 1 – PRELIMINARY

1. Title

This By-law may be cited as the *Local Government Land By-law 2022* and is By-law No. 3 of the City of Mitcham.

2. Authorising Law

This By-law is made under sections 238 and 246 of the Act and section 18A of the *Harbors and Navigation Act 1993*.

3. Purpose

The objectives of this By-law are to regulate the access to and use of Local Government land (other than roads), and certain public places:

- 3.1 to prevent and mitigate nuisances;
- 3.2 to prevent damage to Local Government land;
- 3.3 to protect the convenience, comfort and safety of members of the public;
- 3.4 to enhance the amenity of the Council's area; and
- 3.5 for the good rule and government of the Council's area.

4. Commencement and Expiry

This By-law will commence in accordance with the Act¹ and will expire on 1 January 2030².

Note-

1. Generally, a By-law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.
2. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

5. Application

- 5.1 This By-law operates subject to the Council's *Permits and Penalties By-law 2022*.
- 5.2 Subject to subclauses 5.3 and 5.4, this By-law applies throughout the Council area.
- 5.3 Subclauses 9.2, 9.8.1, 9.22.2, 9.22.3, 9.22.4, 9.24.2, 9.33, 10.4 and 10.8 of this By-law only apply in such part or parts of the Council area as the Council may, by resolution direct in accordance with section 246(3)(e) of the Act.
- 5.4 Subclause 9.12.2.2 of this By-law applies throughout the Council area except in such parts of the Council area as the Council may by resolution direct in accordance with section 246(3)(e) of the Act.

6. Interpretation

In this By-law, unless the contrary intention appears:

- 6.1 **Act** means the *Local Government Act 1999*;
- 6.2 **animal** includes birds and insects but does not include a dog unless stated otherwise;
- 6.3 **aquatic life** means any animal or plant living or growing in water including, but not limited to, yabbies, molluscs, fish, insects, insect pupa or larvae and water plants;
- 6.4 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.5 **boat** includes a raft, pontoon, houseboat, personal watercraft or other similar device;
- 6.6 **camp** includes setting up a camp, or causing a tent, swag and/or similar bedding, a caravan or motor home to remain on the land for the purpose of staying overnight, whether or not any person is in attendance or sleeps on the land;
- 6.7 **Council** means the City of Mitcham;
- 6.8 **electoral matter** has the same meaning as in the *Electoral Act 1985* provided that such electoral matter is not capable of causing physical damage or injury to any person within its immediate vicinity;
- 6.9 **effective control** means a person exercising effective control of an animal either:
- 6.9.1 by means of a physical restraint; or
 - 6.9.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.10 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules- Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.11 **funeral ceremony** means a ceremony only (i.e. a memorial service) and does not include a burial;
- 6.12 **liquor** has the same meaning as in the *Liquor Licensing Act 1997*;
- 6.13 **Local Government land** means all land owned by the Council or under the Council's care, control and management (except roads);
- 6.14 **offensive** includes threatening, abusive, insulting or annoying behaviour and offend has a complementary meaning;
- 6.15 **open container** means a container that:
- 6.15.1 after the contents of the container have been sealed at the time of manufacture:
 - 6.15.1.1 being a bottle, it has had its cap, cork or top removed (whether or not it has since been replaced);
 - 6.15.1.2 being a can, it has been opened or punctured;

6.15.1.3 being a cask, it has had its tap placed in a position to allow it to be used;

6.15.1.4 being any other form of container, it has been opened, broken, punctured or manipulated in such a way as to allow access to its contents; or

6.15.2 is a flask, glass, mug or other container able to contain liquid;

6.16 **personal watercraft** has the same meaning as in the *Harbors and Navigation Act 1993*, which is a device that:

6.16.1 is propelled by a motor;

6.16.2 has a fully enclosed hull;

6.16.3 is designed not to retain water if capsized;

6.16.4 is designed to be operated by a person who sits astride, stands, or kneels on the device; and

includes the device commonly referred to as a jet ski;

6.17 **tobacco product** has the same meaning as in the *Tobacco and E-Cigarette Products Act 1997*;

6.18 **road** has the same meaning as in the Act;

6.19 **vehicle** has the same meaning as in the *Road Traffic Act 1961*;

6.20 **waters** includes a body of water, including a pond, lake, river, creek or wetlands under the care, control and management of the Council; and

6.21 **wheeled recreational device** has the same meaning as in the *Road Traffic Act 1961*.

Note-

Section 12 of the *Legislation Interpretation Act 2021* provides that an expression used in a By-law has, unless the contrary intention appears, the same meaning as in the Acts under which the By-law was made.

PART 2 – ACCESS TO LOCAL GOVERNMENT LAND

7. Access

Note-

Pursuant to section 238(3) of the Act, if a Council makes a By-law about access to or use of a particular piece of Local Government land (under section 238), the Council should erect a sign in a prominent position on, or in the immediate vicinity of, the land to which the By-law applies.

The Council may:

7.1 close, or regulate or restrict access to, any part of Local Government land to the public for specified times and days; and

7.2 fix charges or fees payable for entry onto any part of Local Government land.

8. Closed Land

A person must not without permission, enter or remain on any Local Government land:

- 8.1 which has been closed, or in respect of which access by the public is regulated or restricted in accordance with subclause 7.1;
- 8.2 where entry fees or charges are payable, without paying those fees or charges;
- 8.3 where the land has been enclosed by fences and/or walls and gates that have been closed and locked; or
- 8.4 where a sign is displayed at or near the entrance of the land notifying that the land has been closed.

PART 3 – USE OF LOCAL GOVERNMENT LAND

9. Activities Requiring Permission

Note-

Pursuant to section 238(3) of the Act, if a Council makes a By-law about access to or use of a particular piece of Local Government land (under section 238), the Council should erect a sign in a prominent position on, or in the immediate vicinity of, the land to which the By-law applies.

A person must not without the permission of the Council, undertake any of the following activities on Local Government land.

9.1 Advertising

Display, paint or erect or cause to be displayed, painted or erected, on Local Government land or a structure, building or fixture on Local Government land, any sign, advertising or hoarding for the purpose of commercial advertising or any other purpose.

9.2 Alcohol

Consume, carry or be in possession or in charge of any liquor in an open container on Local Government land comprising parks or reserves to which the Council has determined this paragraph applies.

9.3 Amplification

Use an amplifier or other mechanical or electrical device for the purpose of amplifying sound or broadcasting announcements or advertisements.

9.4 Animals

- 9.4.1 Cause or allow an animal to stray onto, move over, graze or be left unattended.
- 9.4.2 Cause or allow an animal to enter, swim, bathe or remain in any waters located thereupon.

- 9.4.3 Lead, herd or exercise an animal, except where the Council has set aside a track or other area for use by or in connection with an animal of that kind and provided that the animal or animals are under effective control.

9.5 Aquatic Life

Introduce any aquatic life to any waters located on Local Government land.

9.6 Attachments

Subject to subclause 9.1, attach or cause to be attached, hang or fix anything to a tree, plant, equipment, fence, post, structure or fixture on Local Government land.

9.7 Bees

Place a hive of bees thereupon, or allow it to remain thereon.

9.8 Boats and Buoys

Subject to the provisions of the Harbors and Navigation Act 1993 and the Marine Safety (Domestic Commercial Vessel) National Law:

- 9.8.1 launch or retrieve a boat to or from any waters where the Council has determined that this subclause applies;
- 9.8.2 launch or retrieve a boat other than from a boat ramp constructed for that purpose;
- 9.8.3 hire out a boat or otherwise use a boat for commercial purposes;
- 9.8.4 moor a boat on or to Local Government land; or
- 9.8.5 place a buoy, cable, chain, hawser, rope or net in or across any waters.

9.9 Bridge Jumping

Jump or dive from a bridge on Local Government land.

9.10 Buildings

Use a building, or structure on Local Government land for a purpose other than its intended purpose.

9.11 Burials and Memorials

- 9.11.1 Bury, inter or spread the ashes of the remains of any human, dog or animal.
- 9.11.2 Erect any memorial.

9.12 Camping and Tents

- 9.12.1 Subject to this subclause 9.12, erect a tent or other structure of calico, canvas, plastic or similar material.
- 9.12.2 Camp or sleep overnight except:

9.12.2.1 in a caravan park, the proprietor of which has been designated given permission to operate the caravan park on that land; or

9.12.2.2 in an area to which the Council has resolved this clause applies and only then, in accordance with such time limits and other conditions determined by resolution of the Council and contained in any signage erected thereon.

9.13 Canvassing

Subject to subclause 14.2, convey any advertising, religious or other message to any bystander, passer-by or other person.

9.14 Defacing Property

Deface, remove, paint, spray, write upon, cut names, letters or make marks on any tree, rock, gate, fence, object, monument, building, sign, bridge or property of the Council.

9.15 Distribution

Subject to subclause 14.2 and the *Local Nuisance and Litter Control Act 2016*, place on a vehicle (without the consent of the owner of the vehicle), or give out or distribute any book, leaflet or other printed matter to any bystander, passer-by or other person.

9.16 Donations

Ask for or receive or indicate that the person desires a donation of money or any other thing.

9.17 Entertainment and Busking

9.17.1 Sing, busk or play a recording or use a musical instrument for the apparent purpose of entertaining others whether or not receiving money.

9.17.2 Conduct or hold a concert, festival, show, public gathering, circus, meeting, performance or any other similar activity.

9.18 Equipment

Use an item of equipment, facilities or property belonging to the Council other than in accordance with any conditions of use contained on a sign or notice in the vicinity of the equipment, facility or property.

9.19 Fires

Subject to the *Fire and Emergency Services Act 2005* light a fire except:

- 9.19.1 in a place provided by the Council for that purpose; or
- 9.19.2 in a portable barbeque, as long as the barbeque is used in an area that is clear of flammable material for a distance of at least four (4) metres.

9.20 Fireworks

Ignite, explode or use any fireworks.

9.21 Flora and Fauna

Subject to the Native Vegetation Act 1991 and the National Parks and Wildlife Act 1972:

- 9.21.1 plant, damage, pick, cut, disturb, interfere with or remove any plant, tree or flower thereon;
 - 9.21.2 cause or allow an animal or dog to stand or walk on any flower bed or garden plot;
 - 9.21.3 deposit, dig, damage, disturb, interfere with or remove any soil, stone, wood, clay, gravel, pebbles, timber, bark or any part of the land;
 - 9.21.4 take, interfere with, tease, harm or disturb any animal, bird or aquatic life or the eggs or young of any animal, bird or aquatic life;
 - 9.21.5 pick, collect, take, interfere with or disturb any fruit, nuts, berries or native seeds;
 - 9.21.6 disturb, interfere with or damage any burrow, nest or habitat of any animal or bird;
 - 9.21.7 use, possess or have control of any device for the purpose of killing or capturing any animal, bird or aquatic life; or
 - 9.21.8 collect or take any dead wood or timber or burn any timber or dead wood; –
- with the exception that subclauses 9.21.4 and 9.21.7 do not apply to lawful fishing activities.

9.22 Games and Sport

- 9.22.1 Participate in, promote or organise any organised competition or sport, as distinct from organised social play.
- 9.22.2 Play, practise any game which involves kicking, hitting or throwing a ball or other object on Local Government land to which the Council has resolved this subclause applies.

9.22.3 Play or practise the game of golf on Local Government land to which the Council has resolved this subclause applies.

9.22.4 Engage or participate in or conduct any organised group fitness activity or training on Local Government land to which the Council has resolved this subclause applies.

9.23 Interference with Land

Interfere with, alter or damage the land (including a building, structure or fixture located on the land) including:

9.23.1 altering the construction or arrangement of the land to permit or facilitate access from an adjacent property;

9.23.2 erecting or installing a structure in, on, across, under or over the land;

9.23.3 changing or interfering with the construction, arrangement or materials of the land;

9.23.4 planting a tree or other vegetation on the land, interfering with the vegetation on the land or removing vegetation from the land; or

9.23.5 otherwise use the land in a manner contrary to the purpose for which the land was designed to be used.

9.24 Model Aircraft, Boats and Cars

Subject to the Civil Aviation Safety Regulations 1998:

9.24.1 fly or operate a model or drone aircraft, boat or model or remote control vehicle in a manner which may cause or be likely to cause injury or discomfort to a person being on or in the vicinity of the land or detract from or be likely to detract from another person's lawful use of and enjoyment of the land; or

9.24.2 fly or operate a model or drone aircraft, boat or model or remote control vehicle on any Local Government land to which the Council has resolved this subclause applies.

9.25 Overhanging Articles

Suspend or hang an article or object from a building, verandah, pergola, post or other structure where it might present, in the reasonable opinion of an authorised person, a nuisance or danger to a person using the land, or cause an unsightly condition.

9.26 Playing Area

Use or occupy a playing area:

9.26.1 in such a manner as to damage or be likely to damage the surface of the playing area or infrastructure (above and under ground level);

9.26.2 in a manner contrary to the purpose for which the playing area was intended to be used or occupied; or

9.26.3 contrary to directions of the Council made by resolution and indicated on a sign displayed on or adjacent to the playing area.

9.27 Preaching

Preach, harangue or solicit for religious purposes.

9.28 Rubbish Dumps and Rubbish Bins

9.28.1 Interfere with, remove or take away any rubbish that has been discarded at any rubbish dump on Local Government land.

9.28.2 Remove, disperse or interfere with any rubbish (including bottles, newspapers, cans, containers or packaging) that has been discarded in a bin on any Local Government land, or placed on Local Government land for collection by the Council (or its agent).

9.29 Swimming

Subject to the provisions of the *Harbors and Navigation Act 1993* enter, swim or engage in any aquatic activity in or on any waters except:

9.29.1 in waters that the Council has set aside for that purpose; or

9.29.2 in an area where a nearby sign states that such activity is allowed and in accordance with any conditions stated in the sign.

9.30 Trading

9.30.1 Sell, buy, offer or display anything for sale or hire or lease any goods, merchandise, commodity, article or thing.

9.30.2 Carry on or cause to be carried on any business.

9.30.3 Set up a van or other vehicle, stall, stand, table or other structure, tray, carpet or device for the apparent purpose of buying, selling, offering, displaying or exposing for sale or the hiring or leasing of any goods, merchandise, commodity, article, service or thing.

9.31 Vehicles

9.31.1 Drive or propel a vehicle except on an area or road constructed and set aside by the Council for that purpose by means of signs, devices or fencing and the like.

9.31.2 Promote, organise or take part in a race, test or trial of any kind in which vehicles take part, except on an area properly constructed for that purpose.

9.31.3 Repair, wash, paint, panel beat or carry out any other work to a vehicle, except for running repairs in the case of a breakdown.

9.32 Weddings, Functions and Special Events

- 9.32.1 Hold, conduct or participate in a marriage ceremony, funeral ceremony or special event.
- 9.32.2 Erect a marquee, stage or structure for the purpose of holding or conducting a wedding, funeral ceremony or special event.
- 9.32.3 Hold or conduct any filming where the filming is for a commercial purpose.

9.33 Wheeled Recreational Devices

Subject to the *Road Traffic Act 1961*, ride a wheeled recreational device on Local Government land to which the Council has determined this subclause applies.

10. Prohibited Activities

A person must not do any of the following on Local Government land.

10.1 Animals

- 10.1.1 Cause or allow any animal or dog to enter, swim, bathe or remain in any waters to the inconvenience, annoyance or danger of any other person bathing or swimming.
- 10.1.2 Cause or allow an animal or dog to damage a flowerbed, garden plot, tree, lawn or like thing or place.
- 10.1.3 Lead, herd or exercise a horse in such manner as to cause a nuisance or endanger the safety of a person.

10.2 Annoyance

Do anything likely to offend or unreasonably interfere with any other person's lawful use of Local Government land.

10.3 Equipment

Use any item of equipment, facilities or property belonging to the Council other than in the manner and for the purpose for which it was designed, constructed or intended to be used or in such manner as is likely to damage or destroy it.

10.4 Fishing

Fish in any waters to which the Council has determined this subclause applies.

10.5 Interference with Permitted Use

Interrupt or unreasonably interfere with any other person's use of Local Government land where the person is using the land in a manner permitted by the Council or in accordance with any permission that has been granted by the Council.

10.6 Nuisance

Behave in such an unreasonable manner as to cause discomfort, inconvenience, annoyance or offence to any other person including by using profane, indecent or obscene language.

10.7 Playing Games

Play or practise a game or recreational activity:

10.7.1 which is likely to cause damage to the land or anything in it;

10.7.2 which endangers the safety or interferes with the comfort of any person; or

10.7.3 in any area where a sign indicates that the game is prohibited.

10.8 Smoking

Subject to the *Tobacco and E-Cigarette Products Act 1997*, smoke, hold or otherwise have control over an ignited tobacco product on any land to which the Council has determined this subclause applies.

10.9 Obstruction

Obstruct:

10.9.1 any path or track;

10.9.2 any door, entrance, stairway or aisle in any building; or

10.9.3 any gate or entrance to or on Local Government land.

10.10 Solicitation

Tout or solicit customers for the parking of vehicles or for any other purpose whatsoever.

10.11 Throwing objects

Throw, roll, project or discharge a stone, substance or other missile, excluding sport and recreational equipment designed to be used in that way.

10.12 Toilets

In any public convenience on Local Government land:

10.12.1 urinate other than in a urinal or toilet or defecate other than in a toilet set apart for that purpose;

10.12.2 smoke tobacco or any other substance;

10.12.3 deposit anything in a toilet, urinal or drain which is likely to cause a blockage;

10.12.4 use it for a purpose for which it was not designed or constructed;

10.12.5 enter any public convenience unless the person is of the gender indicated in writing or on a sign located on that facility except:

10.12.5.1 in the case of a genuine emergency; or

10.12.5.2 where a vulnerable person is being assisted by the vulnerable person's caregiver, parent or guardian; or

10.12.5.3 if the person is intersex, transgender or gender diverse; or

10.12.5.4 if the person is a person with a disability; or

10.12.5.5 if the person is assisting a person with a disability.

10.13 Waste

10.13.1 Deposit or leave thereon:

10.13.1.1 anything obnoxious or offensive; or

10.13.1.2 any mineral, mineral waste, industrial waste or by-products.

10.13.2 Deposit in any rubbish bin:

10.13.2.1 any trash emanated from a domestic, trade or commercial source;
or

10.13.2.2 any rubbish other than of the type permitted to be deposited in the bin as indicated by signs on the bin or in its vicinity.

PART 4 – ENFORCEMENT

11. Directions

11.1 A person on Local Government land must comply with a reasonable direction from an authorised person relating to:

11.1.1 that person's use of the land;

11.1.2 that person's conduct and behaviour on the land;

11.1.3 that person's safety on the land; or

11.1.4 the safety and enjoyment of other persons on the land.

11.2 A person who, in the reasonable opinion of an authorised person, is likely to commit or has committed, a breach of this By-law must immediately comply with a reasonable direction of an authorised person to leave that part of Local Government land.

12. Orders

If a person fails to comply with an order of an authorised person made pursuant to section 262 of the Act in respect of a breach of this By-law, the Council may seek to recover its costs of any action taken under section 262(3) of the Act from the person to whom the order was directed.

Note-

Section 262(1) of the Act states:

- (1) *If a person engages in conduct that is a contravention of this Act or a By-law under this Act, an authorised person may order that person-*
- (a) *if the conduct is still continuing - to stop the conduct; and*
- (b) *whether or not the conduct is still continuing - to take specified action to remedy the contravention.*

Subsections (2) and (3) of section 262 also provide that it is an offence to fail to comply with an order and that if a person does not comply, the authorised person may take action reasonably required to have the order carried out. For example, an authorised person may order a person to:

- cease smoking on Local Government land;
- remove an object or structure encroaching on Local Government land; or
- dismantle and remove a structure erected on Local Government land without permission.

13. Removal of Animals and Objects

An authorised person may remove an animal or object that is on Local Government land in breach of a By-law if the authorised person reasonably believes no person is in charge of the animal or object.

PART 5 – MISCELLANEOUS

14. Exemptions

- 14.1 The restrictions in this By-law do not apply to any Police Officer, emergency worker, Council Officer or Council employee acting in the course and within the scope of that person's normal duties, or to a contractor while performing work for the Council and while acting under the supervision or in accordance with a direction of a Council Officer.
- 14.2 The restrictions in subclauses 9.13 and 9.15 of this By-law do not apply to electoral matter authorised by a candidate and which is:
- 14.2.1 related to a Commonwealth or State election and occurs during the period commencing on the issue of the writ or writs for the election and ending at the close of polls on polling day;
- 14.2.2 related to an election under the Act or the *Local Government (Elections) Act 1999* and occurs during the period commencing four weeks immediately before the date that has been set (either by or under either Act) for polling day and ending at the close of voting on polling day; or
- 14.2.3 related to, and occurs during the course of and for the purpose of a referendum.

15. Liability of Vehicle Owners

- 15.1 For the purposes of this clause 15, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 15.2 The owner and the driver of a vehicle driven, parked or standing in contravention of this By-law are each guilty of an offence and liable to the penalty as prescribed for that offence.

This By-law was duly made and passed at a meeting of the City of Mitcham held on **9 August 2022** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.



MATTHEW PEARS
Chief Executive Officer

LEGISLATIVE HISTORY

Amendments

Year	By-law No.	Reference	Commencement
2023	8	By-Law Amendment By-Law 2023 published in the <i>Government Gazette</i> on 6 July 2023	6 July 2023

Provision of Local Government Land By-law	How varied	Date of Effect
Clause 9.15	Substituted per clause 7.1 of 8/2023	6 July 2023
Clause 9.25	Substituted per clause 7.2 of 8/2023	6 July 2023
Clause 10.12.5	Substituted per Clause 7.3 of 8/2023	6 July 2023
Clause 11.2	Substituted per Clause 7.4 of 8/2023	6 July 2023
Clause 13	Substituted per Clause 7.5 of 8/2023	6 July 2023