

WESTERN AUSTRALIA
LOCAL GOVERNMENT ACT 1995
DOG ACT 1976

**SHIRE OF PINGELLY
DOGS LOCAL LAW 2027**

Under the powers conferred by the Dog Act 1976, the Local Government Act 1995 and under all other powers enabling it, the Council of the Shire of Pingelly resolved on [date] to make the following local law.

TABLE OF CONTENTS

PART 1 — PRELIMINARY	3
1.1 Citation	3
1.2 Commencement	3
1.3 Application	3
1.4 Repeal	3
1.5 Definitions	3
1.6 Transitional provisions	4
PART 2 — IMPOUNDING OF DOGS	4
2.1 Fees and charges	4
2.2 Attendance of authorised person at dog management facility	4
2.3 Release of impounded dog	4
2.4 Interference with dog management facility	4
PART 3 — KEEPING OF DOGS	4
3.1 Dogs to be confined	4
3.2 Limitation on the number of dogs	5
3.3 Application to keep additional dog or dogs	5
3.4 Determination of application	5
3.5 Where application cannot be approved	5
3.6 Conditions of approval	5
3.7 Revocation of approval to keep additional dogs	6
PART 4 — APPROVED KENNEL ESTABLISHMENTS	6
4.1 Application for licence for approved kennel establishment	6
4.2 Notice of proposed use	6
4.3 Exemption from notice requirements	6
4.4 When application can be determined	6
4.5 Determination of application	6
4.6 Where application cannot be approved	6
4.7 Conditions of approval	7
4.8 Fees	7
4.9 Form of licence	7
4.10 Period of licence	7
4.11 Variation or cancellation of licence	7
4.12 Transfer	7
4.13 Notification	7

4.14	Inspection of kennel.....	8
PART 5 — MISCELLANEOUS		8
5.1	Offence to excrete.....	8
5.2	Dogs not to approach, chase or menace.....	8
5.3	False or misleading statement	8
5.4	Objections and appeals.....	8
PART 6 — ENFORCEMENT.....		9
6.1	Offences	9
6.2	General penalty	9
6.3	Modified penalties	9
6.4	Powers of entry	9
6.5	Form of infringement notices	9
6.6	Severability.....	9
SCHEDULE 1 — APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT.....		9
SCHEDULE 2 — CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT.....		9
SCHEDULE 3 — PRESCRIBED OFFENCES		10
DECLARATION.....		11

PART 1 — PRELIMINARY

1.1 Citation

This local law may be cited as the Shire of Pingelly Dogs Local Law 2027.

1.2 Commencement

This local law comes into operation 14 days after the day on which it is published in the Government Gazette.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The Shire of Pingelly Dogs Local Law, made under the Dog Act 1976 and published in the Government Gazette on 22 July 2003, is repealed.

1.5 Definitions

In this local law, unless the context otherwise requires —

Act means the Dog Act 1976.

adjoining includes land or premises which have a portion of a common boundary with a lot, or is separated from that lot by a public reserve, road, right-of-way, pedestrian access way, access leg of a battle-axe lot or the equivalent not more than 6 metres in width.

authorised person means a person appointed by the CEO under section 9.10 of the Local Government Act 1995 to perform all or any of the functions conferred on an authorised person under this local law.

CEO means the Chief Executive Officer of the local government.

dangerous dog has the meaning given to it by section 3(1) of the Act.

district means the district of the Shire of Pingelly.

dog management facility has the meaning given to it in section 3(1) of the Act, and includes a kennel establishment.

infringement notice means the notice referred to in clause 6.5.

kennel establishment means any premises where more than the number of dogs permitted under clause 3.2, over the age of three months, are kept, boarded, trained or bred temporarily, usually for profit, and where the occupier of the premises is not the ordinary keeper of the dogs.

licence means a licence to keep an approved kennel establishment on premises, granted under clause 4.7.

licensee means the holder of a licence granted under clause 4.7.

local government means the Shire of Pingelly.

local planning scheme means a planning scheme of the local government made under the Planning and Development Act 2005.

notice of withdrawal means the notice referred to in clause 6.5.

nuisance means 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, an unreasonable interference with the use and enjoyment of a person's ownership or occupation of land, or interference which causes material damage to land or other property on the land affected by the interference.

occupier includes any person in control of any premises.

owner in relation to a dog, has the same meaning as in section 3(1) and (2) of the Act.

person liable for the control of the dog has the same meaning as in section 3(1) of the Act.

premises in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence made under clause 4.1.

public place has the meaning given to it by section 3(1) of the Act.

Regulations means the Dog Regulations 2013.

Schedule means a schedule to this local law.

set fee means a fee or charge made by the local government under sections 6.16 to 6.19 of the Local Government Act 1995.

thoroughfare has the meaning given to it in section 1.4 of the Local Government Act 1995.

townsite means the townsite of Pingelly constituted under section 26(2) of the Land Administration Act 1997.

transferee means a person who applies for the transfer of a licence to them under clause 4.12.

1.6 Transitional provisions

Any licence, approval, condition, notice, application or other thing issued, granted, imposed, given or made under the repealed local law, and in force or in progress immediately before the commencement of this local law, continues to have effect, or continues to be dealt with, as if it had been issued, granted, imposed, given or made under this local law.

PART 2 — IMPOUNDING OF DOGS

2.1 Fees and charges

The following are to be imposed and determined by the local government under sections 6.16 to 6.19 of the Local Government Act 1995 —

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional set fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) the additional costs of the destruction and disposal of a dog referred to in section 29(15) of the Act.

2.2 Attendance of authorised person at dog management facility

An authorised person is to be in attendance at the dog management facility for the release of dogs at the times and on the days of the week determined by the CEO.

2.3 Release of impounded dog

- (1) A claim for the release of a dog seized and impounded is to be made to an authorised person.
- (2) An authorised person is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of an authorised person, evidence for the purposes of section 29(8) of the Act —
 - (a) of their ownership of the dog or of their authority to take delivery of it; or
 - (b) that they are the person identified as the owner on a microchip implanted in the dog.

2.4 Interference with dog management facility

A person who, not being an authorised person or a person authorised to do so —

- (a) releases or attempts to release a dog from a dog management facility; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof any dog management facility, or any vehicle or container used for the purpose of catching, holding or conveying a seized dog, commits an offence.

PART 3 — KEEPING OF DOGS

3.1 Dogs to be confined

- (1) An occupier of premises on which a dog is kept must —
 - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
 - (b) ensure the fence used to confine the dog, and every gate or door in the fence, is of a type, height and construction which, having regard to the breed, age, size and physical condition of the dog, is capable of preventing the dog at all times from passing over, under or through it;
 - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless temporarily opened in a manner that ensures the dog remains confined) and is fitted with a proper latch or other means of fastening it;
 - (d) maintain the fence and all gates and doors in the fence in good order and condition; and

- (e) where no part of the premises consists of open space, yard or garden of which the occupier has exclusive use, ensure that other means exist on the premises (other than tethering) for effectively confining the dog.
- (2) Where an occupier fails to comply with subclause (1), they commit an offence.
- (3) An authorised officer may direct an owner or occupier to undertake specific measures to effectively confine a dog on premises, in addition to the requirements of subclause (1).
- (4) A person who fails to comply with a direction given under subclause (3) commits an offence.
- (5) Subclauses (1) to (4) apply to a dangerous dog in addition to any requirement imposed on the owner or occupier under the Act or the Regulations in relation to that dog.

3.2 Limitation on the number of dogs

- (1) This clause does not apply to premises which have been —
 - (a) licensed under Part 4 as an approved kennel establishment; or
 - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act —
 - (a) 2 dogs over the age of 3 months, and the young of those dogs under that age, if the premises are situated within the townsite; or
 - (b) 4 dogs over the age of 3 months, and the young of those dogs under that age, if the premises are situated outside the townsite.
- (3) This clause does not apply to a dangerous dog (declared) or a dangerous dog (restricted breed), the keeping of which is governed by section 26(2)(d) and (4)(b) of the Act.

3.3 Application to keep additional dog or dogs

- (1) Subject to clause 3.5, the local government may consider an application to keep an additional dog or dogs where —
 - (a) the authorised person is reasonably satisfied that the property is suitable, having regard to — sufficient space capable of confining all dogs; effective control of noise, odour and other vectors of disease; and the adequacy of the care and welfare of the dogs;
 - (b) the details of every dog proposed to be kept on the premises are provided, including name, age, description, breed, registration number, microchip details, and whether the dog is, or is proposed to be registered as, a dangerous dog; and
 - (c) sufficient reason has been provided, including — to replace an elderly or sick dog not expected to live; a family emergency resulting in the dog being inherited; the merging of two households; where the applicant has had approval to keep an additional dog or dogs in another local government district; or, on premises outside the townsite, that the dog or dogs are required for stock management.
- (2) In the case of a tenanted property, the application must be accompanied by the written consent of the landowner or their appointed property manager.

3.4 Determination of application

- (1) In determining an application under clause 3.3, the local government is to have regard to —
 - (a) the matters referred to in clause 3.3;
 - (b) the effect which approval may have on the environment or amenity of the neighbourhood;
 - (c) whether approval will create a nuisance for the owners and occupiers of adjoining premises;
 - (d) the size of the lot and the adequacy of fencing on the premises;
 - (e) the applicant's history of compliance with the Act, the Regulations and this local law;
 - (f) any previous nuisance complaints relating to a dog kept on the premises; and
 - (g) whether the dog proposed to be kept, or any dog already kept on the premises, is a dangerous dog.
- (2) The grant of an approval under this Part is at the discretion of the local government, and an applicant who satisfies the matters in this clause is not, for that reason alone, entitled to approval.

3.5 Where application cannot be approved

The local government will not approve an application to keep an additional dog or dogs where more than 2 additional dogs would, as a result, be kept on the premises.

3.6 Conditions of approval

- (1) The local government may approve an application to keep an additional dog or dogs subject to any conditions considered appropriate.
- (2) Approval is not transferable to successive owners or occupiers of the premises.
- (3) A person who fails to comply with a condition imposed under subclause (1) commits an offence.
- (4) Unless earlier cancelled, an approval to keep an additional dog or dogs remains in force for 3 years from the date it is granted, and may be renewed on application in the form and manner determined by the local government.

3.7 Revocation of approval to keep additional dogs

The local government may revoke an approval to keep an additional dog or dogs —

- (a) where a person does not comply with a condition of approval under clause 3.6; or
- (b) on any other ground that the local government considers relevant to the purposes of this local law.

PART 4 — APPROVED KENNEL ESTABLISHMENTS

4.1 Application for licence for approved kennel establishment

An application for a licence must be made in the form of Schedule 1, and must be lodged with the local government together with —

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.2;
- (c) written evidence that the applicant, or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and ensure their health and welfare;
- (d) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the set fee for the application referred to in clause 4.8(1).

4.2 Notice of proposed use

- (1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment, after the application has been lodged — once in a newspaper circulating in the district, and to the owners and occupiers of any adjoining premises.
- (2) The notices must specify that written submissions are to be lodged with the local government within 14 days of the date the notice is given, and that the application, plans and specifications may be inspected at the offices of the local government.
- (3) The local government may refuse to determine the application until notice is given in accordance with its directions, where a notice does not clearly identify the premises or fails to serve its purpose.

4.3 Exemption from notice requirements

The requirements of clause 4.2 do not apply where, under a local planning scheme, an approved kennel establishment is a permitted use, or a use the local government may approve subject to compliance with specified notice requirements, on the premises concerned.

4.4 When application can be determined

An application for a licence is not to be determined until the applicant has complied with clause 4.1, has submitted proof that the notices under clause 4.2 have been given, and the local government has considered any written submissions received within the time specified.

4.5 Determination of application

In determining an application for a licence, the local government is to have regard to —

- (a) the matters referred to in clause 4.6;
- (b) any written submissions received within the time specified in clause 4.2(2);
- (c) any economic or social benefits which may be derived by any person in the district if the application is approved;
- (d) the effect the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether it will create a nuisance for the owners and occupiers of adjoining premises;
- (f) whether appropriate conditions of a licence will mitigate any adverse effects identified; and

- (g) whether any dog proposed to be kept at the kennel establishment is, or is proposed to be registered as, a dangerous dog.

4.6 Where application cannot be approved

The local government cannot approve an application for a licence where an approved kennel establishment cannot be permitted on the premises under a local planning scheme, or where the applicant, or the person who will have charge of the dogs, will not reside on or sufficiently close to the premises so as to control the dogs and ensure their health and welfare.

4.7 Conditions of approval

- (1) The local government may approve an application for a licence subject to the conditions in Schedule 2, and any other conditions considered appropriate.
- (2) The local government may vary any of the conditions in Schedule 2 in respect of a particular application.
- (3) A person who fails to comply with a condition imposed under this clause commits an offence.

4.8 Fees

- (1) On lodging an application for a licence, the applicant is to pay a set fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a set fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a set fee to the local government.

4.9 Form of licence

The licence is to be in the form determined by the local government from time to time, and is to be issued to the licensee.

4.10 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if —
 - (a) the set fee is paid to the local government prior to expiry; and
 - (b) the local government is satisfied that the premises continue to comply with the conditions in Schedule 2, and with any written law applicable to the keeping of an approved kennel establishment.
- (3) On renewal, the local government may vary the conditions of the licence to ensure compliance with any written law in force at the time of renewal.
- (4) Subject to any variation under subclause (3), the conditions of the licence at the time of renewal continue to have effect.

4.11 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence —
 - (a) on the request of the licensee;
 - (b) following a breach of the Act, the Regulations or this local law;
 - (c) if the licensee is not a fit and proper person;
 - (d) if the licence was obtained by a false or misleading statement;
 - (e) if the premises no longer comply with the conditions in Schedule 2;
 - (f) if the person required to reside on, or sufficiently close to, the premises to control the dogs is no longer doing so;
 - (g) if the kennel establishment presents a risk to public health or safety; or
 - (h) on any other ground that the local government considers relevant to the purposes of this local law.
- (3) The cancellation of a licence under subclause (2) is to be effected by written notice to the licensee specifying the day on which the cancellation takes effect, being a day not less than 3 months after the notice is given.
- (4) If a licence is cancelled, the set fee paid for that licence is not refundable for the unexpired term of the licence.

4.12 Transfer

- (1) A written application for the transfer of a valid licence must be made by the transferee, with the written consent of the licensee, and lodged with the local government together with written evidence that a

person will reside at or within reasonably close proximity to the premises, the set fee, and any other relevant information required.

- (2) The local government may approve, with or without conditions, or refuse to approve an application for transfer.

4.13 Notification

The local government is to give written notice of its decision to an applicant for a licence, a transferee, and a licensee, in respect of the grant, refusal, variation, renewal or cancellation of a licence under this Part.

4.14 Inspection of kennel

With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time.

PART 5 — MISCELLANEOUS

5.1 Offence to excrete

- (1) A dog must not excrete on any thoroughfare or other public place, or on any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

5.2 Dogs not to approach, chase or menace

- (1) A person in charge of a dog in a dog exercise area specified under section 31(3A) of the Act must ensure the dog does not approach, chase or menace a person who has not consented to the dog's presence.
- (2) A person who fails to comply with subclause (1) commits an offence.

5.3 False or misleading statement

A person must not make a false or misleading statement in connection with an application, notice or other thing given under this local law.

5.4 Objections and appeals

Division 1 of Part 9 of the Local Government Act 1995 applies to a decision of the local government under Part 3 or Part 4 to grant, renew, vary or cancel an approval or licence, and the holder of, or applicant for, the approval or licence is an affected person for the purposes of that Division.

PART 6 — ENFORCEMENT

6.1 Offences

A person who fails to do anything required under this local law, or directed to be done by an authorised officer under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

6.2 General penalty

A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000, being the maximum penalty permitted by section 50(2) of the Act, 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 continues.

6.3 Modified penalties

- (1) An offence specified in Schedule 3 is a prescribed offence for the purposes of section 9.16(1) of the Local Government Act 1995, and may be dealt with by infringement notice.
- (2) The amount appearing in the third column of Schedule 3 opposite an offence is the modified penalty payable if the dog is not a dangerous dog, or if the dog is a dangerous dog but no amount appears in the fourth column.
- (3) The amount appearing in the fourth column of Schedule 3 opposite an offence is the modified penalty payable if the dog is a dangerous dog.

6.4 Powers of entry

A power of entry exercised for the purposes of this local law is subject to Part 3, Division 3, Subdivision 3 of the Local Government Act 1995, or section 12A of the Dog Act 1976, as applicable.

6.5 Form of infringement notices

- (1) The infringement notice given under section 9.16 of the Local Government Act 1995 is that of Form 2 in Schedule 1 of the Local Government (Functions and General) Regulations 1996.
- (2) The notice withdrawing an infringement notice under section 9.20 of the Local Government Act 1995 is that of Form 3 in Schedule 1 of the Local Government (Functions and General) Regulations 1996.

6.6 Severability

If a provision of this local law is held to be invalid or unenforceable, that invalidity or unenforceability does not affect the remaining provisions, which continue in full force and effect.

SCHEDULE 1 — APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

[Clause 4.1]

1. Full name(s) of applicant(s), postal address, telephone number and email address.
2. Address of proposed kennel premises.
3. Number and breed of dogs to be kept, and whether any dog is, or is proposed to be registered as, a dangerous dog.
4. Name and contact details of the person who will reside on, or sufficiently close to, the premises to control the dogs.
5. Signature of applicant(s) and date.

SCHEDULE 2 — CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

[Clause 4.7]

- (a) Each kennel, unless fully enclosed, must have a yard attached to it.
- (b) Each kennel and yard must be at least 25 metres from the front boundary and 5 metres from any other boundary of the premises, at least 10 metres from any dwelling, and at least 25 metres from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption.
- (c) Each yard must be kept securely fenced with link mesh, netting, or other material approved by the local government.
- (d) The minimum floor area for each kennel is 2.5 times the length of the breed of dog (fully grown), squared, times the number of dogs housed in the kennel.
- (e) The floor area of the yard attached to any kennel must be at least twice the floor area of the kennel.
- (f) The kennel floor must be constructed, drained and finished in accordance with the health requirements of the local government, and connected to an approved apparatus for the treatment of sewage.
- (g) The lowest internal height of a kennel must be the lesser of 2 metres, or four times the height of the breed of dog when fully grown.
- (h) Kennel walls must be constructed of concrete, brick, stone, or framing sheeted with durable material approved by the local government, and kept in good external condition.
- (i) The roof of each kennel must be constructed of impervious material.
- (j) All kennels, yards and drinking vessels must be maintained in a clean condition, and cleaned and disinfected when directed by an authorised person.
- (k) All refuse, faeces and food waste must be disposed of daily by an approved method, which may include an approved apparatus for the treatment of sewage, a contracted waste collection service, or an approved composting system.
- (l) Noise, odours, fleas, flies and other vectors of disease must be effectively controlled.
- (m) Suitable water must be available at the kennel via a properly supported standpipe and tap.
- (n) The licensee, or the person nominated in the application, must continue to reside at, or sufficiently close to, the premises so as to control the dogs and ensure their health and welfare.

SCHEDULE 3 — PRESCRIBED OFFENCES

[Clause 6.3]

Clause	Nature of offence	Modified penalty	Dangerous dog modified penalty
2.4	Interfering with, or causing the unauthorised release of a dog from, a dog management facility or seizure vehicle	\$300	\$500
3.1(2)	Failing to provide means for effectively confining a dog	\$300	\$500
3.1(4)	Failure to comply with a direction to undertake specific containment measures	\$300	\$500
3.2	Exceeding the number of dogs permitted to be kept on premises	\$300	\$500
3.6(3)	Failure to comply with conditions of approval to keep an additional dog or dogs	\$500	\$500
4.7(3)	Failure to comply with the conditions of a licence	\$300	\$500
5.1(2)	Dog excreting in a prohibited place	\$300	\$300
5.2(2)	Failure to prevent a dog approaching, chasing or menacing a person in a dog exercise area	\$300	\$500
5.3	Making a false or misleading statement	\$500	\$500

DECLARATION

Dated this ____ day of _____ 20__.

The Common Seal of the Shire of Pingelly was affixed by authority of a resolution of the Council in the presence of —

Shire President

Chief Executive Officer