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Warrnambool City Council

WARRNAMBOOL
CITY COUNCIL

Local Law Number 2

Short Stay Accommodation Local Law

Adopted by Council [insert]

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PART 1 - ADMINISTRATION OF LOCAL LAW

DIVISION 1 PRELIMINARY

1. TITLE

This Local Law is the Warrnambool City Council Local Law No. 2 – Short Stay Accommodation Local Law and referred to below as this Local Law.

2. OBJECTIVES OF THIS LOCAL LAW

The objectives of this Local Law are to:

(1) provide clear guidelines on the required standards for the operation of this type of accommodation;

(2) ensure equity within the municipal tourism sector by Short Stay Rental Accommodation providers contributing to the tourism sector;

(3) enhance neighbourhood amenity;

(4) provide for the administration of this Local Law and of Council's powers and functions; and

(5) assist with the Peace, order and good governance of the municipal district.

3. POWER TO MAKE THIS LOCAL LAW

The Council's power to make this Local Law is contained in section 71 of the *Local Government Act 2020*.

4. DATE THIS LOCAL LAW COMMENCES OPERATION

This Local Law commences operation on 7th of February, 2023

5. DATE THIS LOCAL LAW CEASES OPERATION

Unless this Local Law is revoked sooner, its operation will cease on the day prior to the 10th anniversary of the date specified under clause 4.

6. SCOPE OF THIS LOCAL LAW

This Local Law applies to the whole of the municipal district save where the provisions thereof specifically provide to the contrary.

7. INTERPRETATION

(1) In this Local Law:

(a) **Act** means the *Local Government Act 1989* (Vic) *and Local Government Act 2020* (as the context requires;

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(b) **Advertise** means the use of any words (written or spoken), pictorial representation or design, or any other representation in any and all means, to publically promote that a Dwelling is to be used as a Short Stay Rental Accommodation;

(c) **Authorised Officer** means a person appointed as an authorised officer under section 224 of the Act;

(d) **Code of Conduct** means the Short Stay Rental Accommodation Code of Conduct adopted by Council on [insert] as amended from time to time and which is applied by this Local Law;

(e) **Council** means the Warrnambool City Council;

(f) **Dwelling** means any building or portion of a building which is used, intended, adapted or designed for use for living;

(g) **Municipal District** has the same meaning as in the Act;

(h) **Notice to Comply** means a notice served under clause PART 1 - Division 415;

(i) **Occupant** means a person who occupies short stay rental accommodation for short stay purposes;

(j) **Owner** means the owner of the Dwelling or any appointed agent or property manager;

(k) **Peace** means freedom from disturbance; the state of not being annoyed by noise or unwanted actions;

(l) **Penalty Unit** has the same meaning as in section 110 of the *Sentencing Act 1991*;

(m) **Registration** means registration under and for the purposes of this Local Law;

(n) **Registration Fee** means the fee for registration that is imposed by the Council under the Council's fees and charges at the time;

(o) Registration Term means the time for which each Registration is issued.

(p) **Short Stay Rental Accommodation** means accommodation for no more than 30 consecutive days in a Dwelling for commercial gain, excluding other accommodation premises required to be registered under alternate legislation; and

(q) **Substantiated Complaint** means a breach of this Local Law or Code of Conduct that has been investigated by Council or an Authorised Officer and Council or an Authorised Officer determines that there are reasonable grounds for suspecting that an offence has been committed.

(2) In this Local Law, unless the context otherwise requires:

(a) words denoting the singular number shall include the plural and vice versa;

(b) words denoting any gender shall include all genders;

(c) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings;

(d) words denoting natural persons shall include corporations and vice versa;

(e) headings are for convenience only and do not affect interpretation;

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(f) references to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation and any legislative provision substituted for, and all regulations and statutory instruments issued under, such legislative provision; and

(g) references to dollars and "$" shall be taken as referring to amounts in Australian Currency.

DIVISION 2 ADMINISTRATION OF THIS LOCAL LAW

8. EXERCISE OF DISCRETIONS

In exercising any discretion given by this Local Law the Council will have regard to:

(1) the objectives of this Local Law; and

(2) any guidelines prepared by the Council.

9. REGISTRATION REQUIREMENTS

(1) The Owner of any Dwelling must not use, or allow to be used, or Advertise, or accept a rental booking for, the Dwelling for Short Stay Rental Accommodation unless:

(a) the Dwelling is Registered under this Local Law; and

(b) the conditions of Registration and this Local Law are complied with.

(2) Registration does not affect the requirement of a Dwelling Owner or any other person to comply with any relevant law.

(3) Registration will not be granted where the Dwelling breaches any legislation that has an impact on the safety of the Owner or Occupants.

(4) Registration will not be granted for tents, caravans, campervans, moveable structures or similar facilities to be used as Short Stay Rental Accommodation.

10. APPLICATION FOR REGISTRATION

(1) An application for Registration in respect of a Short Stay Rental Accommodation Dwelling must:

(a) be in writing and in the form specified by Council;

(b) be made by the Owner of the Short Stay Rental Accommodation Dwelling;

(c) contain the details specified and required in Council's application form; and

(d) be forwarded with the Registration Fee to Council.

(2) The details referred to in clause PART 1 - Division 210(1) must be completed in full before the application will be accepted by Council for consideration.

11. DETERMINING AN APPLICATION

(1) If an application for Registration of a Short Stay Rental Accommodation complies with the requirements of clause PART 1 - Division 210(1), Council may issue to the applicant a certificate of Registration.

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(2) A Registration may be refused or issued with or without conditions.

(3) The conditions of Registration are that the Owner must at all times:

(a) comply with the Code of Conduct;

(b) ensure the Owner has provided Council with the contact details for a designated person(s) for the dwelling who can be contacted at any time of the day or night and that person must respond within 2 hours to any matter relating to the Dwelling;

(c) inform Council in writing of any change to the details submitted with the application for Registration; and

(d) display any registration details provided on all online platforms that advertise the property for Short Stay Rental Accommodation.

(4) Council may also impose additional conditions on a Registration which may include, but are not limited to, conditions concerning:

(a) the payment of a fee or charge;

(b) a standard to be applied;

(c) the rectification, remedying or restoration of a situation or circumstance; and

(d) such other matters as the Council or an authorised officer thinks fit.

(5) Registration is valid for 12 months unless it is cancelled under this Local Law.

12. CANCELLATION

(1) Registration may be cancelled when:

(a) any material change occurs to the application details provided to Council;

(b) Council receives three or more Substantiated Complaints concerning the activities taking place at the Dwelling from residents located within the proximity of the Dwelling during a single Registration Term;

(c) a Substantiated Complaint is of such severity that immediate cancellation is warranted; or

(d) an Owner has been found guilty in a Court of any offence under this Local Law or Code of Conduct; or

(e) there is a breach of other legislation that has an impact on the safety of the Owner or Occupants.

(2) Clause PART 1 - Division 212(1) does not apply where there is a change of the Owner and the details are given to Council within 14 days of the change.

(3) Council is not required to refund any part of the Registration Fee if a Registration is cancelled.

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13. RIGHTS OF APPEAL

(1) An applicant to the refusal, cancelling or issuing of a Registration may lodge an appeal in writing to Council or an Authorised Officer against the decision of Council or an Authorised Officer to refuse, cancel or issue a Registration within 28 days of being notified of the decision.

(2) The Council will appoint a committee to consider any written appeal lodged with Council.

(3) A person may make written and oral representations to the committee.

(4) The committee will inform all parties to an appeal of its decision in writing.

(5) The decision of the committee is final and binding on all parties.

DIVISION 3 PART 3 STANDARD OF MANAGEMENT

14. STANDARD OF MANAGEMENT

(1) The Owner must:

(a) ensure that the use of the Registered Short Stay Accommodation:

(i) complies with the Code of Conduct; and

(ii) does not impact on the Peace expected to be enjoyed by surrounding residents;

(b) provide adjoining neighbours on all boundaries and any neighbours immediately across the road from the Dwelling with the current contact details of the designated person required in clause PART 1 - Division 211(3)(b);

(c) notify Council in writing within 14 days of any change to the details submitted in clause PART 1 - Division 210;

(d) ensure that the designated person responds within 2 hours of being notified of any matter or complaint relating to the dwelling; and

(e) comply with all conditions of Registration.

DIVISION 4 PART 4 ENFORCEMENT

15. OFFENCES

(1) A person who contravenes or fails to comply with this Local Law or the Code of Conduct or contravenes or fails to comply with any condition of Registration is guilty of an offence and liable to a penalty not exceeding 20 penalty units and in the case of a continuing offence is liable to a penalty not exceeding 2 penalty units for each day during which the contravention continues after a finding of guilt by a court of law for an offence.

(2) Where there is a breach of this Local Law an Authorised Officer may serve a notice to comply on the person who is in breach of the Local Law or Code of Conduct by either:

(a) ordinary post;

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(b) email; or

(c) in person to the designated person under clause PART 1 - Division 211(3)(b).

(3) A person must comply with a direction or a Notice to Comply issued by an Authorised Officer or a member of Victoria Police.

(4) A person who fails to comply with a direction or a Notice to Comply issued by an Authorised Officer or a member of the Victoria Police is guilty of an offence under this Local Law.

(5) The Council or an Authorised Officer may, by serving a Notice to Comply, direct any Owner or other relevant person to remedy any thing which constitutes a breach of this Local Law.

(6) A Notice to Comply issued under this Local Law must state the:

(a) thing which contravenes this Local Law;

(b) clause of this Local Law which the thing contravenes; and

(c) date and time by which the contravention the subject of the Notice to Comply must be remedied.

(7) The time by which a contravention must be remedied must be reasonable and, in determining what is reasonable, the Council or the Authorised Officer, as the case may be, will have regard to:

(a) the amount of work involved;

(b) the degree of difficulty;

(c) the other items necessary for compliance;

(d) the degree of risk or potential risk; and

(e) any other relevant matter.

(8) Any person who fails to comply with a Notice to Comply is guilty of an offence.

16. INFRINGEMENT NOTICES

(1) Where an Authorised Officer has reason to believe that a person is guilty of an offence or offences for which an infringement notice may be issued under this Local Law, the Authorised Officer may serve on that person an infringement notice.

(2) The penalty fixed for an infringement notice is the fixed penalty stated in Schedule 1 of the Local Law or, if no penalty is stated in Schedule 1 of the Local Law, 3 penalty units.

(3) Infringement notices are to be served as per the provisions of the *Infringements Act 2006*.

DIVISION 5 FEES AND CHARGES

17. SETTING FEES AND CHARGES

(1) The Council may from time to time by resolution determine the fees and charges to apply under this Local Law.

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(2) Notice of fees and charges fixed under this clause will be given annually in the Council's Fees and Charges Register included in the Budget.

18. PENALTIES

(1) Unless otherwise specified in this Local Law, the:

(a) maximum penalty for an offence is 5 penalty units; and

(b) infringement penalty for an offence is:

(i) two fifths of the relevant maximum penalty; or

(ii) such other amount determined by the Council from time to time.

SCHEDULE 1 SPECIFIC PENALTIES FOR INFRINGEMENT NOTICE PURPOSES

Provision	**Penalty Unit**
PART 1 - Division 29(1)	5 units
PART 1 - Division 314(1)(a)(i)	3 units
PART 1 - Division 314(1)(a)(ii)	3 units
PART 1 - Division 314(1)(b)	3 units
Clause PART 1 - Division 314(1)(c)	3 units
PART 1 - Division 314(1)(d)	3 units
PART 1 - Division 314(1)(e)	3 units
Clause PART 1 - Division 415(3)	5 units

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