

**Please note – this version includes the amendments gazetted on**  
**26 April 1974 (shown in green)**  
**18 April 1975 (shown in pink)**  
**3 August 1979 (shown in blue)**  
**19 November 1982 (shown in orange)**

LOCAL GOVERNMENT ACT, 1960

The Municipality of the Shire of Kalamunda.

### **Adoption of Draft Model By law Relating to Street Lawns and Gardens**

L.G. 760/60

IN pursuance of the powers conferred upon it by the abovementioned Act, the Council of the abovementioned Municipality hereby records having resolved on the 21st day of December, 1964, to adopt such of the Draft Model By-Law published in the *Gazette* of the 7th day of February, 1963, as is here set out: -

The whole of the Local Government Model By-law (Street Lawns and Gardens) No. 11.

All previous by-laws relating to street lawns and gardens are hereby repealed.

Dated this 31st day of May, 1965.

The Common Seal of the Shire of Kalamunda was hereunto affixed in the presence of  
—

F.R. WHITE, President.  
P.A. MORAN, Shire Clerk.

Recommended –

J.F. CRAIG, Acting Minister for Local Government.

Approved by His Excellency the Governor in Executive Council this 23rd day of June, 1965

W.S. LONNIE, Clerk of the Council

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The text of the Model By-law that was adopted (gazetted on 7 February 1963) is as follows:

LOCAL GOVERNMENT ACT, 1960 – 1962

Local Government Department,  
Perth, 21st January, 1963

L.G.D. 276/56.

HIS Excellency the Governor in Executive Council, acting pursuant to the powers conferred by the Local Government Act, 1960-1962, has been pleased to cause the draft model by-laws set out in the schedule hereto to be prepared and published.

A.E. WHITE, Secretary for Local Government.

Schedule.  
Draft Model By-laws.

1. These by-laws may be cited as the Local Government Model By-laws (Street Lawns and Gardens) No 11.

2. In these by-laws, unless the context otherwise requires -

"the Act" means the Local Government Act, 1960 (as amended) and, except as otherwise in this by-law provided, words and expressions have the same meaning as they have in the Act;

"carriageway" means a portion of a road that is improved, designed or ordinarily used for vehicular traffic, and includes the shoulders, and areas, including embayments, at the side or centre of the road, used for the standing or parking of vehicles; but does not include a lane, right of way or driveway;

"footpath" includes that part of a road set apart or constructed for the use of pedestrians and every established footway, pavement, lane, thoroughfare or any other part of a road set apart for the use of pedestrians, and, where any part of a road is not so set apart or constructed, that portion on both sides of a road **three metres** in width measured from the property line and extending alongside such road;

"intersection" includes the area comprised within imaginary straight lines joining in succession the points of transection of the property lines of two or more roads that meet each other; except that where the property lines are curved at any corner, the point of transection of the property lines shall be regarded as the point on the curve nearest to the point at which those property lines, if extended in straight lines from each end of the curve, would meet;

"junction" includes that part of a road lying between imaginary straight lines at right angles to the road commencing from the points of transection formed by its own property lines with the property lines of a road which abuts thereon; except that where the property lines are curved at any corner, the point of transection formed by the property lines shall be determined in the same manner as is provided in the definition of "intersection";

"property line" means the boundary between the land comprising a street and the land that abuts thereon.

3. Where, before the coming into operation of these by-laws, a lawn or garden has been planted in a street, that lawn or garden shall be deemed to have been regularly planted pursuant to these by-laws.
4.
  - (1) A person shall not plant a lawn or garden in a street, except pursuant to a permit issued by the council and then only in conformity with these by-laws.
  - (2) The council shall not issue a permit for the planting of a lawn or garden in any portion of a street, except on the application of the owner or occupier of the land that abuts on that portion of the street.
  - (3) A person requiring a permit to plant a garden in a street shall submit to the council a sketch plan setting out details of the proposed garden and the positions of the proposed garden beds, in relation to the frontage and the carriageway.
  - (4) The council may issue a permit under this by-law subject to such conditions as it sees fit to impose; and a person who plants a lawn or garden otherwise than in compliance with those conditions commits an offence.
5. A person shall not plant a lawn or garden, in a street -
  - (a) so that it extends beyond the frontage in respect of which the permit is issued;
  - (b) so that it encroaches on the pavement of a carriageway, or on a made footpath;
  - (c) that is not graded evenly, from the frontage of the land abutting on that portion of the street to the kerb of the carriageway.
6.
  - (1) Any water pipes laid to a lawn or garden, in a street, shall-
    - (a) be laid beneath the surface of the street, at a depth of not more than **thirty centimetres**, nor less than **fifteen centimetres**, and so that any fitting connected to them does not project above the surface of the lawn or garden;
    - (b) if connected to a public water supply, be laid to comply with the requirements of the body constituted for, and having the control of, that supply under an Act;
    - (c) if connected to a private supply, where passing under road pavement, made footpaths or crossings, be of galvanised, wrought iron or of copper; and

- (d) have approved valves, located within the property where they are connected to the supply and fitted so as to give complete control of the flow of water from the supply.
  - (2) Where a person, in the course of laying pipes pursuant to this by-law, causes damage to any road pavement, footpath, or crossing, to any water, gas or sewerage pipes, to any power or telephone cables or to a fire hydrant, that damage may be made good, by the authority having the control of the thing damaged, at the expense of that person or of the person on whose behalf the pipes were laid; and the amount of that expense may be recovered in any court of competent jurisdiction.
7. A person shall not water a street lawn or garden in such manner as will, or may, occasion inconvenience to persons using the adjoining carriageway or footpath.
8. (1) A person planting a lawn or garden in a street may do all things reasonably necessary to maintain that lawn or garden and shall make good any damage thereby occasioned to the street and shall keep the lawn mowed to a reasonable height.
- (2) Nothing in these by-laws authorises a person to place or erect any fence, enclosure or other obstruction on, or about, a lawn or garden in a street.
- (3) A person shall not plant any tree or shrub that is grown, or is of a variety likely to grow, to a height exceeding **1.2 metres**, in a lawn or garden in a street, so that it is within **twelve metres** of a junction or intersection.
9. The council may at any time, by notice in writing to the owner or occupier of land that abuts upon that part of a street wherein a lawn or garden is planted, require that owner or occupier to remove any tree, shrub or water piping or fitting and may, where the owner or occupier does not comply with the notice, remove the tree, shrub, piping or fitting at the expense of the owner or occupier, and any expense incurred by the council pursuant to this by-law may be recovered in any court of competent jurisdiction.
10. (1) The council or any other authority empowered by law to dig up a street may, without being liable to compensate any person therefor, dig up all or any part of a lawn or garden in a street, for the purposes of carrying out any authorised works.
- (2) A person employed by the council or other authority acting pursuant to this by-law shall not disturb a lawn or garden or damage any pipes laid under it or them to any greater extent that is reasonably necessary for the purpose of carrying out any authorised works and shall, upon the completion of the works, reinstate the lawn or garden, as far as is reasonably practicable.

11. (1) Where the council or any other authority authorised by law to dig up a street for the purpose of carrying out authorised works is of the opinion that the carrying out of those works may be impeded by the existence of piping, under a lawn or garden in a street, it may give notice to the owner or occupier of the land abutting on the lawn or garden to remove the piping, until the completion of the works; and may, where the owner or occupier does not comply with the notice, remove the piping at the expense of the owner or occupier; and any expense incurred by the council or authority pursuant to this by-law may be recovered in any court of competent jurisdiction.
- (2) The council or other authority is not liable for damage to piping under a lawn or garden in a street, occasioned either in the course of the removal of the piping under the provisions of sub-by-law (1) of this by-law or of carrying out authorised works.
12. (1) A person, not being the occupier of the land abutting on that lawn or garden, shall not, without the consent of that occupier, drive or stand a vehicle or animal upon a lawn or garden planted in a street pursuant to these by-laws.
- (2) Where a complaint brought under this by-law is in respect of the driving of a vehicle upon a lawn or garden, if the pavement of the carriageway adjoining the lawn or garden does not exceed **5.5 metres** in width, it is a sufficient defence to the complaint to show that -
  - (a) the wheels of one side only of the vehicle passed over the lawn or garden; and
  - (b) it was necessary to drive upon the lawn or garden in order to pass another vehicle then being driven or standing on the pavement of the carriageway.
- (3) A notice served under subsection (2) of section 669C of the Act in respect of an offence against this by-law shall be in or to the effect of Form 1 in the Schedule to these by-laws.
- (4) Subject to sub-by-law (5) of this by-law an infringement notice served under section 669D of the Act in respect of an offence against this by-law shall be in or to the effect of Form 2 in the Schedule to these by-laws.
- (5) An infringement notice served under subsection (2) of section 669D of the Act in respect of an offence against this by-law shall be in or to the effect of Form 3 in the Schedule to these by-laws.
- (6) A notice sent under subsection (5) of section 669D of the Act withdrawing an infringement notice served under that section in respect of an offence against this by-law shall be in or to the effect of Form 4 in the Schedule to these by-laws.

13. Except as provided by these by-laws, every person who wilfully damages a lawn or garden in a street or who removes from any such garden any flower, plant or shrub commits an offence.
14. The council is not liable for any damage sustained by a person by reason of, or arising out of, the planting, or existence, of a lawn or garden in a street.
15. Every person who commits an offence under these by-laws is liable to a penalty of **two hundred and fifty dollars (\$250)**.
16. The modified penalty for an offence against by-law 12 of these by-laws, if dealt with under section 669D of the Act, is **twenty-five dollars (\$25)**.
17. A penalty for an offence against these by-laws (not being a modified penalty) may be recovered by the Council by taking proceedings against the alleged offender in a Court of Petty Sessions.
18. The Council shall cause adequate records to be kept of all infringement notices served, and modified penalties received, under section 669D of the Act in respect of offences against by-law 12 of these by-laws.

**SCHEDULE**

**Form 1.**

**Shire of Kalamunda Street Lawns and Gardens By-laws.**

**Municipal Offices**

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**NOTICE REQUIRING OWNER OF VEHICLE TO IDENTIFY DRIVER**

To..... Serial No .....  
.....  
..... Date .....

the owner of vehicle make.....Type.....  
Plate No.....

You are hereby notified that it is alleged that on..... the .....day  
of.....19... at about.....  
the driver or person in charge of the above vehicle did.....  
.....  
.....

in contravention of the provisions of by-law No 12 of the Shire of Kalamunda Street  
Lawns and Gardens By-laws.

You are hereby required to identify the person who was the driver or person in charge  
of the above vehicle at the time when the above offence is alleged to have been  
committed.

Unless within twenty-one days after the date of the service of this notice you:-

- (a) Inform the Shire Clerk of the Shire of Kalamunda or .....  
(designation(s) of authorized officer(s))  
as to the identity and address of the person who was the driver or person in  
charge of the above vehicle at the time of the above offence;  
or
- (b) satisfy the Shire Clerk of the Shire of Kalamunda that the above vehicle has  
been stolen or unlawfully taken or was being unlawfully used, at the time of the  
above offence

you will, in the absence of proof to the contrary, be deemed to have committed the  
above offence and Court proceedings may be instituted against you.

Signature of authorized officer .....  
Designation .....

**Form 2.**

**Shire of Kalamunda Street Lawns and Gardens By-laws.**

**Municipal Offices**

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.....

**INFRINGEMENT NOTICE**

To..... Serial No .....

.....

..... Date .....

You are hereby notified that it is alleged that on..... the.....  
day of.....19...at about.....  
you did.....

.....

.....

in contravention of the provisions of by-law No 12 of the Shire of Kalamunda Street  
Lawns and Gardens By-laws.

The modified penalty prescribed for this offence is \$.....

If you do not wish to have a complaint of the above offence heard and determined by  
a Court you may pay the modified penalty within twenty-one days after the date of the  
service of this notice.

Unless payment is made within twenty-one days of the date of the service of this  
notice Court proceedings may be instituted against you.

Payment may be made either by posting this form together with the amount of  
\$..... mentioned above, to the Shire Clerk of the Shire of Kalamunda or  
by delivering this form and paying that amount at the Municipal  
Offices.....  
between the hours of ..... am and ..... pm on Mondays to Fridays.

Signature of authorized officer .....

Designation .....



**Form 3.**

**Shire of Kalamunda Street Lawns and Gardens By-laws.**

**Municipal Offices**

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**INFRINGEMENT NOTICE**

To..... Serial No .....

.....  
..... Date .....

(not to be completed where notice is attached to or left in or on vehicle)

the owner of vehicle make.....Type.....

Plate No.....

You are hereby notified that it is alleged that on..... the .....day  
of.....19..... at about.....  
you did.....  
.....  
.....

in contravention of the provisions of by-law No 12 of the Shire of Kalamunda Street  
Lawns and Gardens By-laws.

The modified penalty prescribed for this offence is \$.....

If you do not wish to have a complaint of the above offence heard and determined by  
a Court you may pay the modified penalty within twenty- one days after the date of  
the service of this notice.

Unless within twenty-one days after the date of the service of this notice -

- (a) the modified penalty is paid; or
- (b) you:-
  - (i) inform the Shire Clerk of the Shire of Kalamunda or  
.....  
(designation(s) of authorized officer(s))  
as to the identity and address of the person who was the driver or  
person in charge of the above vehicle at the time of the above offence;  
or
  - (ii) satisfy the Shire Clerk of the Shire of Kalamunda that the above  
vehicle had been stolen or was being unlawfully used at the time of the  
above offence,

you will, in the absence of proof to the contrary, be deemed to have committed the  
above offence and Court proceedings may be instituted against you.

Payment may be made either by posting this form together with the amount of \$..... mentioned above, to the Shire Clerk of the Shire of Kalamunda or by delivering this form and paying that amount at the Municipal Offices..... between the hours of ..... am and ..... pm on Mondays to Fridays.

Signature of authorized officer .....  
Designation .....

Name.....  
Address.....  
Post Code.....

If your name and address do not appear in this notice please complete the above to enable a receipt to be forwarded.

**Form 4.**

**Shire of Kalamunda Street Lawns and Gardens By-laws.**

**Municipal Offices**

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**WITHDRAWAL OF INFRINGEMENT NOTICE**

To ..... Date.....  
.....  
.....

Infringement Notice No..... Date.....  
for the alleged offence of .....  
.....

Modified Penalty..... is hereby withdrawn.

Signature of authorized officer .....  
Designation .....