

Gold Coast City Council



Local Law No. 5

(Distribution of Business Advertising

Publications and Touting) 2008

It is hereby certified that this is a true and correct copy of
Local Law No. 5 (Distribution of Business Advertising Publications and Touting) 2008 made, in accordance with
the *Local Government Act 1993*, by the Council of the City of Gold Coast

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Acting Chief Executive Officer

**Gold Coast City Council
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(Distribution of Business Advertising Publications and
Touting) 2008**

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Part 1 Preliminary

1 Short title

This local law may be cited as *Gold Coast City Council Local Law No. 5 (Distribution of Business Advertising Publications and Touting) 2008*.

2 Object

The objects of this local law are to—

- (a) prohibit touting and the distribution of business advertising publications in a public place; and
- (b) prevent unreasonable impacts upon the amenity, enjoyment and use of a public place; and
- (c) prevent a nuisance, hazard, inconvenience or annoyance to a person in a public place.

3 Definitions—the dictionary

The dictionary in the Schedule (Dictionary) of this local law defines particular words used in this local law.

4 Relationship to other local laws

The powers given by this local law must be exercised in a way that is not inconsistent with all Acts (including subordinate legislation) including—

- (a) the *Environmental Protection Act 1994*; and
- (b) the *Transport Operations (Road Use Management) Act 1995*; and
- (c) the *Transport Operations (Passenger Transport) Act 1994*.

Part 2 Prohibited activity

5 Distribution of business advertising publications

- (1) Subject to subsection (2), a person must not when in a public place distribute a business advertising publication.

Maximum penalty for subsection (1)—50 penalty units.

- (2) Subsection (1), does not apply to the distribution of—
- (a) a newspaper which complies with the *Printing and Newspaper Act 1981*;
or
 - (b) printed material by post; or
 - (c) a bus timetable at a bus stop; or
 - (d) printed material which involves the promotion of public awareness of the prevention of emergencies and distributed by—
 - (i) the Queensland Police Service; or
 - (ii) Queensland Fire and Rescue; or
 - (iii) the Rural Fire Service; or
 - (iv) the Queensland Ambulance Service; or
 - (v) the State Emergency Service; or
 - (e) a particular business advertising publication or a class of business advertising publication which is specified in a subordinate local law.

6 Touting

- (1) A person must not tout in a public place.

Maximum penalty for subsection (1)—50 penalty units.

- (2) Subsection (1) does not apply to—
- (a) a person who is attempting to arrange a multiple hiring for a taxi at a taxi rank pursuant to the *Transport Operations (Passenger Transport) Act 1994*; or
 - (b) a person who at a bus stop is selling nothing but tickets which allow travel on a scheduled passenger service which utilises that bus stop; or
 - (c) a person who is the holder of an approval under the *Tow Truck Act 1973* who is touting in respect of the operation of the tow truck for which the approval is held; or
 - (d) touting in respect of an activity specified in a subordinate local law.

Part 3 Enforcement

7 Compliance notice

- (1) A local government may give a compliance notice to—
 - (a) a person who contravenes this local law; and
 - (b) any person involved in the contravention of this local law pursuant to section 13 (Liability of third parties) of this local law.
- (2) A compliance notice may require the person to whom it is given to stop the contravention, if the contravention is of a continuing or recurrent nature.
- (3) A person to whom the compliance notice is given must comply with the compliance notice.

Maximum penalty for subsection (3)—50 penalty units.

8 Stop order

- (1) A local government may, by notice to the person carrying out a prohibited activity, require the person to cease the prohibited activity within the time allowed in the notice where—
 - (a) a compliance notice is not complied with within the time allowed for compliance in the compliance notice; or
 - (b) the prohibited activity is in the local government’s opinion likely to give rise to—
 - (i) harm to human health or safety or personal injury; or
 - (ii) property damage or a loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance.
- (2) Subject to subsection (3), the person to whom a stop order is given must—
 - (a) cease to undertake the prohibited activity; and
 - (b) comply with the stop order.

Maximum penalty for subsection (2)—200 penalty units.

- (3) The stop order ceases where the person to whom a stop order is given has complied with to the satisfaction of the local government—
 - (a) the requirements of this local law; and

- (b) the requirements of any relevant compliance notice; and
- (c) the requirements of the stop order.

9 Performance of work

- (1) A person committing an offence under this local law must make good any damage caused directly or indirectly by the commission of the offence.
- (2) The local government may perform work where a person has failed to perform work required to be performed by¹—
 - (a) subsection (1); or
 - (b) a compliance notice or a stop order issued under this local law; or
 - (c) any other provision of this local law.
- (3) The local government may in the course of performing work remove from the premises any structure, vehicle, equipment, animal or thing involved in the operation of the prohibited activity where the local government is satisfied there is a risk of²—
 - (a) harm to human health or safety or personal injury; or
 - (b) property damage or a loss of amenity; or
 - (c) environmental harm or environmental nuisance; or
 - (d) a nuisance.
- (4) The local government may dispose as it sees fit of any material of any nature removed by the local government pursuant to subsection (3).³
- (5) An authorised person may perform the work that the local government is empowered to undertake pursuant to subsection (2).
- (6) The Court may order a person found guilty of an offence under this local law to—
 - (a) perform work required to be performed by—

¹ The exercise of this power is subject to section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*.

² The exercise of this power is subject to section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*.

³ Section 40 (Confiscated goods) of *Local Law No. 3 (Administration) 2008* provides for the local government to remove, confiscate or impound goods.

- (i) subsection (1); or
 - (ii) a compliance notice or a stop order issued under this local law; or
 - (iii) a provision of this local law; and
- (b) pay to the local government all costs incurred by the local government in performing the work pursuant to subsection (2).

10 Power of entry and cost recovery

- (1) If the work to be carried out by the local government is on land of which the local government is not the owner or occupier, the local government may enter the land to perform the work—
- (a) under section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*, if the person who has failed to perform the work is the owner or occupier of the land; or
 - (b) section 1070 (Entry on land for local government purposes) of the *Local Government Act 1993*, if the person who has failed to perform the work is not the owner or occupier of the land.⁴
- (2) If the person who failed to perform the work is the owner of the land, the amount properly and reasonably incurred by the local government to perform the work is recoverable (together with any interest) under section 1066 (Performing work for owner or occupier), section 1067 (Cost of work recoverable as a rate) and section 1068 (Cost of work a charge over land) of the *Local Government Act 1993*.
- (3) If the person who failed to perform the work is not the owner of the land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default together with interest on the same basis as applies to an owner of the land under section 1067 (Cost of work recoverable as a rate) of the *Local Government Act 1993*.⁵

11 Evidence

In any proceedings for an offence involving a contravention of this local law, an averment in a complaint that—

- (a) a named location is a public place; or

⁴ A magistrate may make an order for entry under section 1063 (Order on occupier who refuses entry) of the *Local Government Act 1993* if the occupier refuses to permit entry.

⁵ Section 1067(2) (Cost of work recoverable as a rate) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

- (b) a public place is within the territorial unit of the local government; or
- (c) in the case of a contravention of section 5(1) (Distribution of business advertising publications) of this local law, section 5(2) (Distribution of business advertising publications) has no application; or
- (d) in the case of an offence under section 12(2) (Executive officers must ensure corporation complies with this local law) of this local law—
 - (i) a person is an executive officer of the corporation; and
 - (ii) the corporation has been convicted of an offence,

will be evidence of the fact stated.

Part 4 Administrative provisions

12 Executive officers must ensure corporation complies with local law

- (1) The executive officers of a corporation must ensure the corporation complies with this local law.
- (2) If a corporation commits an offence against a provision of this local law, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this local law is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complied with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) This section applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence committed by the corporation in contravention of this local law.

13 Liability of third parties

- (1) Any person involved in a contravention of this local law commits an offence.

Maximum penalty for subsection (1)—the penalty for which any person who committed the contravention would be liable.

- (2) For the purposes of subsection (1), a person involved in a contravention of this local law is any person who—
- (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by threats or promises or otherwise, the contravention; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with others to effect the contravention.

14 Attempts to commit offences

- (1) A person who attempts to commit an offence under this local law commits an offence.

Maximum penalty for subsection (1)—half the maximum penalty for committing the attempted offence.

- (2) The provisions of the *Criminal Code* (relevant to attempts to commit offences) apply to the attempt.

15 Defences

It is a defence to any breach or non-compliance of any provision contained in this local law if a person has a lawful excuse or defence.

Example—

It is a defence to any breach or non-compliance of any provision contained in this local law if a person was not criminally responsible in accordance with Chapter 5 of the *Criminal Code*.

Part 5 Subordinate local laws

16 Subordinate local laws

The local government may specify in a subordinate local law—

- (a) that a place under the local government's control is subject to this local law pursuant to the Schedule (Dictionary) of this local law; and
- (b) that section 5(1) (Distribution of business advertising publications) of this local law does not apply to the distribution of a particular business advertising publication or a class of business advertising publication pursuant to section 5(2)(e) (Distribution of business advertising publications) of this local law; and

- (c) that section 6(1) (Touting) of this local law does not apply to a person who has touted in respect of a specified activity pursuant to section 6(2)(d) (Touting) of this local law; and
- (d) such other matters as are provided for in this local law.

Schedule Dictionary

section 3

authorised person means a person authorised by the local government pursuant to *Local Law No. 3 (Administration) 2008* to exercise the powers of an authorised person under this local law.

business advertising publication means a publication that publicises any business, commercial or trade activity.

compliance notice means the written notice given pursuant to section 7 (Compliance notice) of this local law.

corporation means a corporation as defined in the *Corporations Act 2001* (Cth) and includes an association as defined by the *Associations Incorporations Act 1981*.

Court means the court of law which has jurisdiction to deal with offences under this local law.

environmental harm has the meaning given in the *Environmental Protection Act 1994*.

environmental nuisance has the meaning given in the *Environmental Protection Act 1994*.

executive officer of a corporation means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

local law includes any subordinate local law.

newspaper has the meaning given in the *Printing and Newspapers Act 1981*.

nuisance has the meaning given in *Local Law No. 8 (Public Health, Safety and Amenity) 2008*.

prohibited activity means an activity prohibited pursuant to sections 5(1) (Distribution of business advertising publications) and 6(1) (Touting) of this local law.

publication means any printed or written matter and includes a book, pamphlet, leaflet, circular, handbill, notice, ticket, voucher, pass, advertisement, poster, magazine or other periodical publication, but does not include a newspaper.

public place means—

- (a) a road as defined under the *Local Government Act 1993*; or
- (b) land owned by the local government; or
- (c) trust land as defined under the *Land Act 1994* of which the local government is trustee; or
- (d) a mall that is—
 - (i) under the control of the local government; or
 - (ii) the subject of an agreement between the owner or occupier of a mall and the local government which states that the mall is to be treated as a public place in accordance with this local law; or
- (e) any place under the local government's control that is declared under a subordinate local law to be subject to this local law.

publicise means to draw to the attention of, make known, advertise or promote and **publicises** has the corresponding meaning.

scheduled passenger service has the meaning given in the *Transport Operations (Passenger Transport) Act 1994*.

stop order means the written notice given pursuant to section 8(1) (Stop order) of this local law which has not ceased pursuant to section 8(3) (Stop order) of this local law.

tout means to publicise either verbally or in writing a business, commercial or trade activity and **touted** and **touting** have the corresponding meaning.

