

**CITY OF ONKAPARINGA****ROADS BY-LAW 2023****By-law No. 3 of 2023**

*A By-law to regulate certain activities on roads in the Council's area.*

**PART 1 – PRELIMINARY****1. Title**

This By-law may be cited as the *Roads By-law 2023* and is By-law No. 3 of the City of Onkaparinga.

**2. Authorising Law**

This By-law is made under sections 239 and 246 of the Act and regulation 28 of the *Local Government (General) Regulations 2013*.

**3. Purpose**

The objects of this By-law are to manage, control and regulate certain uses of roads in the Council area:

- 3.1 to protect the convenience, comfort and safety of road users and members of the public;
- 3.2 to prevent damage to buildings and structures on roads;
- 3.3 to prevent certain nuisances occurring on roads; and
- 3.4 for the good rule and government of the Council area.

**4. Commencement, Revocation and Expiry**

- 4.1 The following By-laws previously made by the Council are revoked from the day on which this By-law comes into operation<sup>1</sup>:

*By-Law No. 3 – Roads 2016.*<sup>2</sup>

- 4.2 This By-law will expire on 1 January 2031.<sup>3</sup>

**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. Section 253 of the Act provides that the revocation of a By-law by another By-law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-law to a part or parts of the Council area.
- 3. 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 2023.
- 5.2 Subject to subclause 5.3, this By-law applies throughout the Council's area.
- 5.3 Subclause 7.3.3 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, insects and poultry but does not include a dog;
- 6.3 **authorised person** is a person appointed by the Council as an authorised person under section 260 of the Act;
- 6.4 **Council** means the City of Onkaparinga;
- 6.5 **effective control** means a person exercising effective control of an animal either:
  - 6.5.1 by means of a physical restraint; or
  - 6.5.2 by command, the animal being in close proximity to the person and the person being able to see the animal at all times;
- 6.6 **electoral matter** has the same meaning as in the *Electoral Act 1985*;
- 6.7 **emergency worker** has the same meaning as in the *Road Traffic (Road Rules - Ancillary and Miscellaneous Provisions) Regulations 2014*;
- 6.8 **moveable sign** has the same meaning as in the Act;
- 6.9 **road** has the same meaning as in the Act, being a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes—
  - 6.9.1 a bridge, viaduct or subway; or
  - 6.9.2 an alley, laneway or walkway;
- 6.10 **vehicle** has the same meaning as in the *Road Traffic Act 1961*; and
- 6.11 **waste containers** means a container for the disposal of domestic waste, recyclables or green organics that is used to facilitate the kerbside collection of waste from premises by the Council or its agents or contractors.

### Note-

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

## **PART 2 – USE OF ROADS**

### **7. Activities Requiring Permission**

A person must not engage in or undertake any of the following activities on a road without the permission of the Council.

#### **7.1 Advertising**

Display or cause to be displayed on a road or on a structure on a road, any poster, advertising or sign for the purpose of advertising goods or services or for any other purpose, other than a moveable sign that is displayed in accordance with the Council's *Moveable Signs By-law 2023*.

**Note-**

Moveable signs on roads are regulated by sections 226 and 227 of the Act and the Council's *Moveable Signs By-law 2023*.

#### **7.2 Amplification**

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

#### **7.3 Animals**

7.3.1 Cause or allow an animal to stray onto, move over, or graze on a road 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 the animal or animals are under effective control.

7.3.2 Lead, herd or exercise an animal in such a manner as to cause a nuisance or endanger the safety of a person.

7.3.3 Lead, herd or exercise any horse, cattle, camel or sheep on any road to which the Council has determined this subclause applies.

#### **7.4 Attachments**

Attach or cause to be attached, hang or fix anything to a Council owned tree, plant, equipment, fence, post, structure or fixture on a road.

#### **7.5 Donations**

Ask for or receive or do anything to indicate a desire for a donation of money or any other thing.

#### **7.6 Fish**

Fish on or from any road.

## **7.7 Obstructions**

Erect, install, place or maintain or cause to be erected, installed, placed or maintained, any structure, object or material of any kind so as to:

7.7.1 obstruct a road, footway, water-channel, or watercourse; or

7.7.2 cause a hazard to users of the road.

## **7.8 Preaching and Canvassing**

7.8.1 Preach, harangue, solicit or canvass for religious or charitable purposes.

7.8.2 Subject to subclause 11.2, convey any religious or other message to any bystander, passerby or other person.

## **7.9 Public Exhibitions and Displays**

7.9.1 Sing, busk, play a recording or use a musical instrument, or perform similar activities.

7.9.2 Conduct, cause or hold a concert, festival, show, public gathering of more than seventy (70) persons, exhibition circus, performance or a similar activity.

7.9.3 Erect a stage or structure for the purpose of conducting or holding a concert, festival, show, circus, performance or a similar activity.

## **7.10 Waste and Rubbish Bins**

7.10.1 Deposit or leave thereon anything obnoxious or offensive.

7.10.2 Deposit in any bin on a road that is provided by the Council for use by the public any rubbish:

7.10.2.1 emanating from a domestic, commercial or trade source; or

7.10.2.2 or waste contrary to any information on signs on the bin or in its vicinity.

## **7.11 Repairs to Vehicles**

Repair, wash, paint, panel beat or perform other work of any nature on or to any vehicle, except for running repairs in the case of a vehicle breakdown.

## 7.12 Waste Containers

Place, cause or allow to be placed, waste containers on a road to facilitate the collection of waste generated on neighbouring or nearby premises by the Council (or its agents or contractors) unless the waste containers are placed on the road:

7.12.1 for no more than a consecutive period of seventy-two (72) hours and otherwise in accordance with any waste collection policy adopted by the Council that includes requirements for the placement of waste containers on a road; and

7.12.2 in a position that:

7.12.2.1 is adjacent to the kerb (not on the carriageway) so that the front of the bin faces the road; and

7.12.2.2 as may otherwise be directed by the Council or specified in any waste collection policy adopted by the Council.

## PART 3 – ENFORCEMENT

### 8. Directions

A person on a road who, in the reasonable opinion of an authorised person is committing or has committed a breach of this By-law, must immediately comply with an order of the authorised person including any order to leave that part of the road.

### 9. Orders

If a person does not 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 (the **offender**) engages in conduct that is a contravention of this Act or a By-law under this Act, an authorised person may order the offender-*
  - 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 busking on a road;
- remove an object or structure blocking a footpath;
- remove advertising displayed on a structure on a road; or
- dismantle and remove a tent from a road.

### 10. Removal of Animals and Objects

10.1 The Council (or its delegate) may, pursuant to section 234 of the Act, remove an animal or object that is on a road in breach of a By-law if no person is in charge of the animal or object.

10.2 The Council may seek to recover from the owner of an object removed under subclause 10.1 the costs it incurs in removing that object.

## PART 4 – MISCELLANEOUS

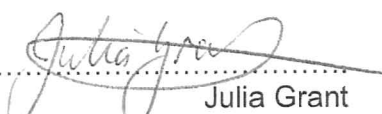
### 11. Exemptions

- 11.1 The restrictions in this By-law do not apply to any emergency worker, Police Officer, Council Officer or 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.
- 11.2 The restriction in subclause 7.8.2 of this By-law does not apply to electoral matter authorised by a candidate and which is:
- 11.2.1 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;
- 11.2.2 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
- 11.2.3 related to, and occurs during the course of and for the purpose of a referendum.

### 12. Liability of Vehicle Owners

- 12.1 For the purposes of this clause 12, **owner** in relation to a vehicle has the same meaning as contained in section 4 of the Act.
- 12.2 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 Onkaparinga held on **18 July 2023** by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

  
.....  
Julia Grant  
Acting Chief Executive Officer

SECTION 249 LOCAL GOVERNMENT ACT 1999

**CERTIFICATE OF VALIDITY**

I, CIMON ANGELA BURKE care of Level 6, 19 Gilles Street, Adelaide in the State of South Australia, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following By-law:

**THE CITY OF ONKAPARINGA**

**By-law No 3 – Roads By-Law 2023**

*This By-Law is for the management, control and regulation of certain activities on roads in the Council's area.*

and do certify that in my opinion:

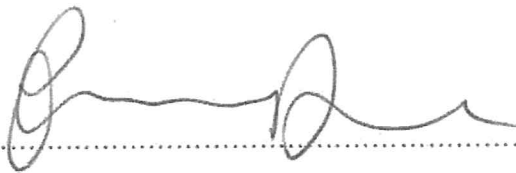
**THE CITY OF ONKAPARINGA**

has the power to make the By-law by virtue of the following statutory provisions:

*Local Government Act 1999: sections 239, 246(1), 246(2), 246(3)(a), 246(3)(c), 246(3)(e), 246(3)(f) and 246(3)(h)(iii); and  
Local Government (General) Regulations 2013: regulation 28.*

and the By-law is not in conflict with the *Local Government Act 1999*.

DATED the 2 day of July 2023



Cimon Burke, Legal Practitioner