



RESERVES, PARKS AND GARDENS BY-LAW NO. 2 of 2015

A By-Law of the Break O'Day Council made under the provisions of section 145 of the *Local Government Act 1993*, to regulate, control and protect Council's reserves, recreation grounds, parks and gardens owned by or under the control of the Break O'Day Council

PART 1 - PRELIMINARY

1. Short title

This by-law may be cited as the Break O'Day Reserves, Parks and Gardens By-Law.

2. Application

This by-law applies to the Municipality of Break O'Day in its entirety.

3. Interpretation

In this by-law -

"Authorised Officer" means a Police Officer of the Tasmania Police Service, the General Manager of the Break O'Day Council or any person appointed by the General Manager as an authorised officer for the purpose of this By-law.

"Council" means the Break O'Day Council.

"Parking Area" means any area in or associated with a public reserve constructed or set aside by Council for parking of vehicles including all equipment, signs, access ways, fences and structures used or connected in any way with the parking area.

"Parking Space" means a space within a parking area indicated by lines or other marks on the ground or indicated by any other method, of sufficient clear space to accommodate a vehicle within that space.

"Penalty Unit" means the amount of money set under the *Penalty Units and Other Penalties Act 1987*.

"Public Reserve" means any part of a reserve, beach, coastal or river foreshore, rockery, area of bushland, natural area, planted embankment, plantation, sports ground, recreation ground, swimming pool, park or garden owned, or under the control of the Council, including:

1. Any road, path or car parking area within any of those areas;
2. Any structure or building erected on those areas; and
3. The exterior grounds of any building owned, leased or otherwise under the control of the Council that is not in those areas.

PART 2 – USE OF PUBLIC RESERVES

4. Closure of Public Reserve

1. The General Manager may close all or any part of a public reserve to members of the public.
2. A person must not enter or remain in any part of a public reserve that is closed to the public without written permission of the General Manager.

Penalty: a fine not exceeding 5 penalty units.

3. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

5. Hire of Public Reserve

1. The General Manager may enter into an agreement to hire a public reserve.
2. The General Manager may impose terms and conditions in an agreement to hire a public reserve.

6. Non-Compliance with Hire Conditions

1. A person must comply with the terms and conditions within an agreement to hire a public reserve.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

7. Sub-Hire of Public Reserve

1. A person who has hired a public reserve must not sub-hire the public reserve without the written permission of the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

PART 3 – DISALLOWED ACTIVITIES

NOTE: Permissions granted under part 3 of this By-Law do not constitute Council planning approval under the *Land Use Planning and Approvals Act 1993* or the *Break O'Day Council Interim Planning Scheme 2013* or building approval under the *Building Act 2000*.

8. Erection of a Structure

1. A person must not erect a building, booth, tent or other structure in a public reserve without written permission from the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

3. The General Manager may authorise an employee of Council to remove any structure erected without written permission under Clause 8(1) and take any reasonable measure to return the reserve to the condition it was in before the structure was erected.

9. Erection of a Sign

1. A person must not erect or allow to be erected a sign, banner or billboard in a public reserve without written permission from the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.
3. An authorised officer may remove any unauthorised sign and store it in a safe place until any fine imposed under this clause has been paid or a period of two (2) months have elapsed, whichever is the sooner.
4. If any unauthorised sign remains in storage for over two (2) months and the fine remains unpaid, then an authorised officer may dispose of the sign.

10. Sale of Items

1. A person must not sell or offer for sale, lease or hire anything, including food or refreshments in a public reserve without prior written permission from the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

11. Organised Sport

1. A person must not conduct or participate in an organised sport, contest or game in a public reserve without written permission of the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

12. Organised Activities

1. A person must not, in a public reserve, conduct any amusement or entertainment for financial reward without written permission from the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

13. Camping

1. A person must not camp in a public reserve without the written permission from the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. For the purposes of subclause 13(1) "camp" means to:
 - a. Erect a tent, camper trailer or similar portable shelter; or
 - b. Place, park or leave a caravan, campervan, mobile home or similar vehicle on the reserve between 10.00pm and 6.00am; or
 - c. Sleep in the open or in any form of shelter or vehicle between 10.00pm and 6.00am.
3. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

14. Abuse of an Authorised Officer and/or an Employee of Council

1. A person must not threaten, intimidate, or use abusive language to an authorised officer and/or an employee of Council acting in the course of their employment in relation to or in connection with any matter relating to a public reserve.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

15. Alcohol Free Areas

1. The areas identified in Schedule 2 are alcohol free areas at all times unless written permission from the General Manager has been given.
2. The Council may by resolution declare any other area in a public reserve to be an alcohol free area:
 - a. During any specified hours or periods or both; or
 - b. At all times.
3. The Council may by resolution revoke or amend any resolution under subclause (2), whether or not any specified period has expired.
4. For the purposes of subclause (5) an area of a public reserve is an alcohol free area if it is identified in Schedule 2, or;
 - a. Has been declared an alcohol free area under subclause (2); and
 - b. The area is identified as being an alcohol free area by a sign within it or in its close proximity; and
 - c. The sign indicates that the possession or consumption of alcohol is prohibited within that area; and
 - d. If the Council's resolution provides that the area is alcohol free only during specified hours or periods:
 - i. The sign states those hours or period; and
 - ii. The action occurs during those hours or period.
5. In an alcohol free area without written permission of the General Manager:
 - a. A person must not consume liquor; or
 - b. A person must not, without reasonable excuse (proof of which lies on the person), have in his or her possession an opened or unsealed container of liquor.

Penalty: a fine not exceeding 10 penalty units

6. A person may avoid a prosecution by paying a fine to the Council of 2 penalty units within 14 days after the issue of the infringement notice.
7. In this clause "alcoholic beverage" means a beverage (other than a medicine) that:
 - a. Is intended for human consumption; and
 - b. Has an alcoholic content greater than 0.5% by volume when at a temperature of 20° Celsius.

PART 4 – DAMAGE TO PROPERTY

16. Planting or Tending Vegetation

1. A person must not in a public reserve plant any vegetation without the written permission of the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.
3. The provisions of sub clause (1) do not apply to any employee, contractor or authorised volunteer of or engaged by the Council to plant vegetation in that public reserve who plants vegetation of the nature they are engaged by the Council to plant.
4. For the purposes of this clause, "plant" includes:
 - a. Any method of placing vegetation in or on the ground in a way that is likely to allow or induce the vegetation to survive or grow; and
 - b. Propagating, husbanding, watering or otherwise tending to vegetation.

17. Interference with Items

1. A person must not in a public reserve, without the written permission of the General Manager, move, remove, tamper with or damage:
 - a. A tree, shrub, plant, flower, or garden bed; or
 - b. Any sod, turf, loam, sand, gravel, stone or any other similar material; or
 - c. A water pipe, tap, sprinkler, or hose; or
 - d. A pond or fountain or the water in it except to drink from a drinking fountain; or
 - e. Any sign or public notice erected by or authorised by the Council.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.
3. The provisions of sub clause (1) do not apply to any employee, contractor or authorised volunteer of or engaged by the Council who does anything reasonably required in the course of that engagement.

18. Fire

1. A person must not, in a public reserve, light a fire other than in a fireplace or designated place provided by Council for public use, without written permission of the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

PART 5 – VEHICLES

19. Parking of a Vehicle

1. A person must not in a public reserve park a vehicle:
 - a. In a parking area where parking spaces are marked unless it is parking wholly within a parking space; or
 - b. Otherwise than as directed by an authorised officer or by signs and notice boards erected by the Council; or
 - c. In a position where it obstructs the entry or exit of a vehicle to another parking space or parking area.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

20. Parking When a Reserve is Closed

1. The General Manager may close a public reserve or any part of a public reserve to vehicular traffic.
2. When a public reserve is closed to vehicular traffic a person must:
 - a. Not enter the public reserve with a vehicle; or
 - b. Remove any vehicle they have parked in that public reserve when directed to do so by an authorised officer.

Penalty: a fine not exceeding 5 penalty units.

3. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

21. Driving of a Vehicle

1. A person must not drive or park on any grassed areas of a public reserve without the written permission of the General Manager.

Penalty: a fine not exceeding 5 penalty units.

2. A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.
3. The provisions of subclause (1) do not apply to:
 - a. An employee, contractor or authorised volunteer of or engaged by Council to undertake any activity in the public reserve and who is using the vehicle for the purpose of that activity; or
 - b. Police, ambulance, fire or other emergency services using the vehicle in the performance of their duties.

PART 6 – MISCELLANEOUS

22. Removal from Area

An Authorised Officer may remove any person from a public reserve who that officer reasonably believes is offending against this By-Law.

23. Removal of Articles

1. An Authorised Officer may remove anything which is on or in a public reserve which is on that land contrary to this By-Law.
2. The Authorised Officer or Council may keep anything removed under clause 23(1) in a safe place until the reasonable expense of its removal and storage have been paid.

24. Supply of Name and Address

A person must supply their correct and full name and present permanent or temporary address if requested by an authorised officer, if the officer reasonably believes that the person is offending or has offended against the By-Law.

Penalty: a fine not exceeding 5 penalty units.

A person may avoid a prosecution by paying a fine to the Council of 1 penalty unit within 14 days after the issue of the infringement notice.

25. Arrest of Offenders by the Police

1. A police officer may arrest a person who is on a public reserve and whom the police officer reasonably believes is offending against this By-Law if:
 - a. The person refuses to leave the public reserve as required by an authorised person or a police officer under clause 22; or
 - b. The person does not supply the information requested by an authorised person or a police officer under clause 24.
2. Clause 25(1) does not apply to offences against clauses 6 or 7.

26. Infringement Notices

1. An "Authorised Officer" may issue an infringement for any offence.
2. S.149 of the *Local Government Act 1993* (the Act) states that by-laws may provide that an authorised officer:
 - May issue an infringement notice to a person in respect of offences specified in this By-Law; and
 - May issue one (1) infringement notice in respect of more than one (1) offence; and;
 - May impose a monetary penalty for an offence in respect of which an infringement notice is issued.
3. S.149 of the *Local Government Act 1993* (the Act) provides that a by-law which provides for the issue of an infringement notice and monetary penalty is to specify:
 - The amount of the monetary penalty;
 - The person who may issue a notice of infringement;
 - The person to whom payment of the monetary penalty may be made; and
 - The period within which the monetary penalty is to be paid in order to avoid the infringement notice being referred to the Director of the Monetary Penalty Enforcement Service.

4. A fine is a penalty payable to the Council as an alternative to prosecution and any penalty that may be imposed as a result of the prosecution.
5. A fine specified in an infringement notice is:
 - Payable to the cashier at the Council Office, 32-34 Georges Bay Esplanade, St Helens; or
 - If payment is not made in person, payable by cheque or money order made out to the Break O'Day Council and mailed to the Break O'Day Council, 32-34 Georges Bay Esplanade, St Helens, 7216.
6. An infringement notice is to be substantially in the form provided in Schedule 3.
7. An infringement notice may be served:
 - By personally serving the notice upon the alleged offender; or
 - By sending the notice by registered mail addressed to the alleged offender at their last known place or residence or business.
8. S.149(4) of the *Local Government Act 1993* states that an infringement notice is to be in accordance with S.14 of the *Monetary Penalties Enforcement Act (MPEA)*. S.14 of the MPEA requires that an infringement notice is to:
 - Specify the offence or offences in respect of which it is served;
 - Specify the prescribed penalty or penalties that are applicable;
 - Specify the total amount payable if the notice relates to more than one offence;
 - Specify the payment procedures available;
 - Specify any other details prescribed under the MPEA or the Act that creates the offence.
 - Inform the person on whom it is served that if he or she wishes to have any of the offences heard and determined by a court, he or she must lodge (with the Council) a notice of election in accordance with the MPEA within 28 days of the service of the infringement notice.
 - Inform the person on whom it is served that if he or she does not lodge a notice of election within 28 days of the service of the infringement notice and the infringement notice is not withdrawn, he or she will be taken to be convicted of the offence or offences set out in the infringement notice and the monetary penalty set out in the infringement notice may be enforced under the MPEA.
9. If at any time after an infringement notice is issued, the General Manager decides that the infringement notice should be withdrawn, the General Manager may withdraw an infringement notice.
10. The withdrawal of an infringement notice does not prevent Council from prosecuting the person to whom the notice was issued for breach of this By-Law.
11. The Council may not prosecute a person to whom it has issued an infringement notice with respect to the offence referred to in it unless:
 - The General Manager has withdrawn the infringement notice; or
 - The fine imposed by the infringement notice has not been paid by the time required in the infringement notice.
12. All monies payable to the Council or General Manager in respect of an infringement notice are a debt due to the Council and recoverable at law.

SCHEDULE 1

Infringement Notice Offences

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4
CLAUSE	SPECIFIED OFFENCE	INFRINGEMENT NOTICE PENALTY (Penalty Units)	REDUCED PENALTY IF PAID TO COUNCIL WITHIN 14 DAYS OF DATE OF INFRINGEMENT NOTICE (Penalty Units)
4	Closure of Public Reserve	3	1
6	Non-Compliance with Hire Conditions	3	1
7	Sub-Hire of Public Reserve	3	1
8	Erection of a Structure	3	1
9	Erection of a Sign	3	1
10	Sale of Items	3	1
11	Organised Sport	3	1
12	Organised Activities	3	1
13	Camping	3	1
14	Abuse of an Authorised Officer	3	1
15	Alcohol Free Areas	6	2
16	Planting or Tending Vegetation	3	1
17	Interference with Items	3	1
18	Fire	3	1
19	Parking of Vehicles	3	1
20	Parking when a Reserve is Closed	3	1
21	Driving of a Vehicle	3	1
24	Supply of Name and Address	3	1

SCHEDULE 2

Designated Alcohol Free Areas

The following areas are designated Alcohol Free Areas from 7.00pm – 7.00am seven (7) days per week unless written permission is given from the General Manager or Authorised Officer:

- Portland Memorial Park
- St Marys Hall and surrounding car park and cenotaph
- Boat Harbour Point Reserve and viewing platform area
- Binalong Bay Shack Site
- St Helens Foreshore
- Fingal Park, Talbot Street, Fingal

SCHEDULE 3

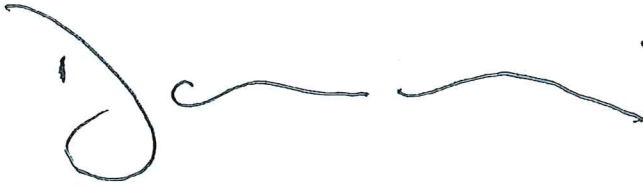
Infringement Notices

An infringement notice will reflect the requirements of the *Monetary Penalties Enforcement Act 2005* – Section 14 Form of infringement notices.

1. In this clause – “specified offence” means an offence against the clause specified in Column 1 of Schedule 1.
2. An infringement notice may be issued in respect of a specified offence and the monetary penalty set out adjacent to the offence in Column 3 of Schedule 1 is the penalty payable under the infringement notice for that offence.
3. An authorised officer may –
 - a. issue an infringement notice to a person whom the authorised officer has reason to believe is guilty of a specified offence
 - b. issue one infringement notice in respect of more than one specified offence.
4. The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.
5. In addition to any other method of service, an infringement notice alleging that a vehicle has been used in relation to a specified offence may be served by affixing it to that vehicle.
6. Payment of an infringement notice issued under this by-law must be made to the General Manager within 28 days of the issue of the infringement notice to avoid the infringement notice being referred to the Director, MPES.

The Schedule setting out the offences and the infringement notice penalties can be found in Schedule 1.

Certified that the provisions of the By-Law are in accordance with the law by



D MORRIS
Legal Practitioner

Dated this 22nd day of March 2016

Certified that the By-Law is made in accordance with the *Local Government Act 1993* and The Common Seal of the BREAK O'DAY COUNCIL was hereunto affixed in the presence of



J BROWN
General Manager

Dated this 22 day of March 2016
at 32-34 Georges Bay Esplanade, St Helens

