

COUNCIL LOCAL LAW



Alpine Shire

LOCAL LAW NO. 2 MUNICIPAL PLACES (2012)

(Incorporating the Amending Local Law (2015) – Local Law No. 2 Municipal Places (2012))

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PART 1: PRELIMINARY

1. Title

This is the Local Law No 2 Municipal Places (2015).

This incorporates the Amending Local Law (2015) – Local Law No. 2 Municipal Places (2012).

2. Objectives

The principal objectives of this local law are to:

- (1) allow and protect the quiet enjoyment by people of municipal places within the municipal district; and
- (2) enable people in the municipal district to carry out their day to day activities and to enjoy their recreational pursuits without having their peace and enjoyment interfered with or destroyed; and
- (3) recognise and respond to community expectations relating to the quality of life they expect and require and are capable of influencing; and
- (4) control and prevent behaviour which is a nuisance, or which may be detrimental to health and safety or which affects the enjoyment of recreational or other facilities; and
- (5) enable the community and visitors and their families who use municipal places that are available to the public to be confident in their choice of the use of those facilities or places; and
- (6) protect Council and community assets and facilities on or in municipal places; and
- (7) prohibit, regulate and control:
 - (a) behaviour in municipal places which is offensive, dangerous, threatening, harmful or intimidating which, for other reasons, is inappropriate in a municipal place;
 - (b) the places and times at which alcohol may be consumed; and
- (8) to restrict the consumption of alcohol in a municipal place within Bright during the annual event known as the Bright Iconic Rod Run; and
- (9) provide generally for the peace, order and good government of the municipal district; and
- (10) provide for the administration of the council's powers and functions.

3. The power to make this local law

- (1) The Council's authority to make this local law is contained in Part 5 of the *Local Government Act 1989*.

4. Commencement and revocations

- (1) In this clause "commencement date" means the day after the day on which the local law is made.
- (2) This local law comes into operation on the commencement date.
- (3) On the commencement of this local law, Council's Municipal Places Local Law No. 2 (2002) is revoked

5. Definitions

In this local law, unless inconsistent with the context:

Term	Meaning
Act	means the Local Government Act 1989 .
Alcoholic beverage	means a beverage intended for human consumption with an alcoholic content greater than 0.5 per centum by volume at a temperature of 20 degrees celsius.
Appropriate fee	means the appropriate fee determined by the Council in accordance with this local law.
Authorised officer	means an authorised officer under section 224 of the Act.
Building	Means: a. a structure and part of a building or a structure; and b. fences, walls, out-buildings, service installations and other appurtenances of a building; and c. a boat or a pontoon which is permanently moored or fixed to land.
Council	means the Alpine Shire Council.
Environmental Health Officer	means the Environmental Health Officer appointed by the Council.
Licensed premises	means a premises for which a licence has been granted under the <i>Liquor Control Act 1987</i> .
Municipal district	means the municipal district of the Council.
Municipal place	means a public place which is owned or occupied by, or vested in, the Council, or in respect of which the Council has the care and

	management, to which the public has access (whether or not on payment of an admittance fee).
Municipal property	includes a building, or part of a building, or vegetation.
Notice to comply	means a notice to comply issued under this Local Law.
Penalty unit	means the monetary unit ascribed to the term in the <i>Sentencing Act 1991</i>
Permit	in relation to an activity, means a permit issued under this local law which authorises that activity.
Planning scheme	means the applicable planning scheme under the <i>Planning and Environment Act 1987</i> .
Public place	has the same meaning as in the <i>Summary Offences Act 1966</i> .
Restaurant	includes an indoor area where seating is provided to customers who consume food prepared or served at food premises in the immediate vicinity of that area.

6. Human rights charter

This policy does not contravene the Victorian Government's Human Rights Charter.

Part 2: Behaviour in municipal places

7. Behaviour in municipal places

- (1) A person must not, in a municipal place, behave in a manner which is offensive, dangerous, threatening, harmful or intimidating.
- (2) A person must not, in a municipal place, behave in a way which would be detrimental to the municipal place, municipal property or other public assets.
- (3) A person who owns or occupies land in the municipal district must not cause or allow trees, plants or any other matter on that land to cause damage to or interference with a municipal place or municipal property.
- (4) A person must not in a municipal place:
 - (a) use language or behave in a manner which is indecent, offensive or abusive which annoys, disturbs, interrupts, molests or obstructs any person's enjoyment of a municipal place or a public place; or
 - (b) act in a way which endangers any person; or
 - (c) use any volatile, explosive or flammable matter; or
 - (d) damage, destroy, write on, interfere with, remove or affix anything to any building or municipal property; or
 - (e) carry firearms unless specifically authorised to do so, being a person who is a police officer acting in the course of duty or another person referred to in section 29D(4) of the *Firearms Act 1958*;
 - (f) shoot, snare, injure or in any way harm or interfere with any bird or animal; or
 - (g) use any lifesaving or fire fighting device unless during an emergency or with the approval of a person in charge or an authorised officer; or
 - (h) act contrary to any conditions of use which apply.

Part 3: Consumption of alcoholic beverages

8. Times and area for the consumption of alcoholic beverages

(1) A person must not during the times specified in 8(1)(a) consume an alcoholic beverage, have in their possession or under their control, any alcoholic beverage (other than in a sealed container), in or on any municipal place which is located or contained within the area shown on the maps in 8(1)(b) unless the municipal place is a licensed premises or authorised premises or the event has a liquor licence under the *Liquor Control Reform Act 1998*.

(a) The following times are specified as the times during which the consumption of alcoholic beverages or the possession of alcoholic beverage in an unsealed container may not occur in an area shown on the map in 8(1)(b) unless the place of consumption is a licenced premises or authorised premises or the event has a liquor licence under the *Liquor Control Reform Act 1998*.

1 December to 30 November inclusive: from 10:00pm to 7:00am

(b) The following maps detail the area in which alcoholic beverages must not be consumed or possessed in an unsealed container between the hours of 10.00 pm and 7.00 am unless the place of consumption is a licenced premises or authorised premises or the event has a liquor licence under the *Liquor Control Reform Act 1998*.

No offence arises in respect of the consumption or possession of alcoholic beverage if the Council has granted a permit, or an exemption from the requirement to have a permit, and there is compliance with any conditions of that permit or exemption.

(2) Despite clause 8(1) of this local law, the consumption of alcoholic beverages or the possession of alcoholic beverages in an unsealed container must not occur within the area shown shaded purple on Map 1A (Bright) in clause 8(1)(b) of this local law on the weekend that the event known as the Bright Iconic Rod Run (or a successor event) is held, during the following periods:

- 8.30pm Friday to 12.00 midday Saturday;
- 8.30pm Saturday to 12.00 midday Sunday; and
- 8.30pm Sunday to 12.00 middayt Monday.

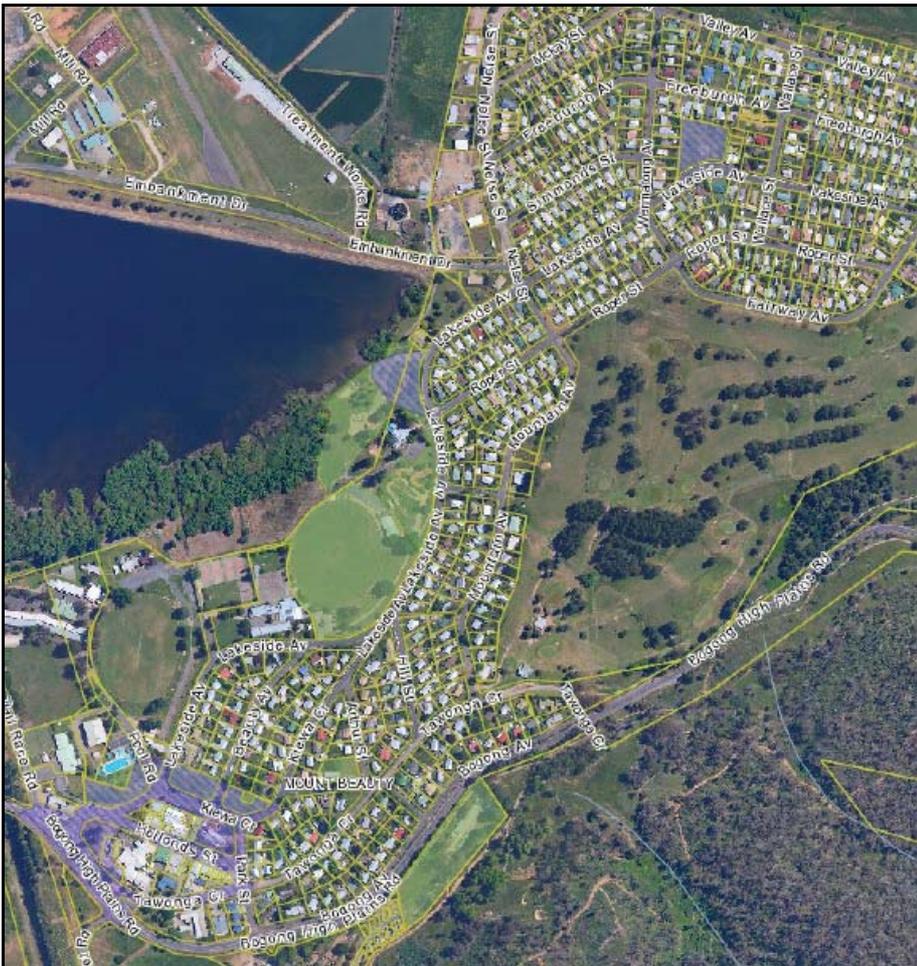
No offence arises in respect of the consumption of alcohol or the possession of alcoholic beverages in an unsealed container provided it is in accordance with a permit granted under this local law.



Map 1A - Restricted areas in Bright (shaded purple areas)



Map 1B: Restricted areas in Myrtleford (shaded purple areas)



Map 1C: Restricted areas in Mount Beauty (shaded purple areas)



Map 1D: Restricted areas in Porepunkah (shaded purple areas)

9. Permit may be granted to allow consumption of liquor

- (1) The Council may grant a permit for the consumption of liquor or for the possession of liquor in unsealed containers in any municipal place identified in the maps in (8)(1)(b) or during the times specified in (8)(1)(a).
- (2) In deciding whether to grant a permit the Council must take into consideration:
 - The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.
 - The impact of the hours of operation on the amenity of the surrounding area.
 - The impact of the number of patrons on the amenity of the surrounding area.
 - The cumulative impact of any existing licensed premises and the proposed licensed premises/event on the amenity of the surrounding area.

Part 4: Permits, fees and delegations

10. Applying for a permit

- (1) A person who wishes to apply for a permit may do so by:
 - (a) lodging with the Council an application, in a form approved by the Council; and
 - (b) paying to the Council the appropriate application fee.
- (2) The Council may require an applicant to provide additional information before dealing with an application for a permit or for exemption.
- (3) The Council may require a person making an application for a permit to give public notice which will entitle any person to make a submission and to be heard in accordance with section 223 of the Act.

11. Fees

- (1) The Council may, from time to time, by resolution determine fees for the purposes of this local law.
- (2) In determining any fees and charges the Council may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.
- (3) The Council may waive, reduce or alter a fee with or without conditions.

12. Issue of permits

The Council may:

- (a) issue a permit with conditions
- (b) refuse to issue a permit

13. Duration of permits

- (1) A permit is in force until the expiry date indicated on the permit, unless it is cancelled before the expiry date.
- (2) If no expiry date is indicated on the permit, the permit expires on 30 June next after the day on which it is issued.

14. Conditional permits

- (1) A conditional permit may be subject to conditions which the Council considers to be appropriate in the circumstances including:
 - (a) the payment of a fee or charge; and
 - (b) a time limit to be applied either specifying the duration, commencement or completion date; and
 - (c) the happening of an event; and
 - (d) the rectification, remedying or restoration of a situation or circumstance; and
 - (e) where the applicant is not the owner of the subject property, the consent of the owner; and
 - (f) the granting of some other permit or authorisation.
- (2) The conditions of a permit must be set out in the permit.
- (3) The Council may, during the currency of a permit, alter the conditions of a permit if it considers it to be appropriate to do so, after providing the permit holder with an opportunity to make comment on the proposed alteration.
- (4) A person who undertakes an activity for which the Council has issued a permit must comply with the conditions of the permit.

15. Cancellation of a permit

- (1) The Council may cancel a permit if it considers that:
 - (a) there has been a serious or ongoing breach of the conditions of the permit; or
 - (b) a Notice to Comply has been issued, but not complied with within seven days after the time specified in the notice for compliance; or
 - (c) there was a significant error or misrepresentation in the application for the permit; or
 - (d) in the circumstances, the permit should be cancelled.
- (2) Before it cancels a permit, the Council must provide to the permit holder an opportunity to make comment on the proposed cancellation.
- (3) If a permit holder is not the owner of the land and the owner's consent was required to be given to the application for the permit, the owner must be notified of any notice to comply and of the reason why it has been served.

16. Correction of permits

- (1) The Council may correct a permit in relation to:
 - (a) an unintentional error or an omission; or
 - (b) an evident material miscalculation or an evident material mistake of description of a person, thing or property.
- (2) The Council must notify a permit holder in writing of any correction.
- (3) If the permit holder is not the owner of the land and the owner's consent was required to be given to the application for the permit, the owner must be notified of any correction to a permit.

17. Registers

- (1) The Council must maintain a record of permits, including details of corrections and cancellations.
- (2) The Council must maintain a register of determinations made, and of guidelines prepared, for the purposes of this Local Law.
- (3) The Council must ensure that the registers are available for public inspection at the office of the Council during normal business hours.

18. Service authorities

- (1) A service authority or a person employed by or acting on behalf of a service authority is not required to obtain a permit in respect of work which is for the purposes of the service authority.
- (2) A person who would, but for this clause, be required to obtain a permit in respect of any activity must notify the Council of the activity prior to its commencement.

19. Exemptions

- (1) The Council may by written notice exempt any person or class of persons from the requirement to have a permit, either generally or at specified times.
- (2) An exemption may be granted subject to conditions.
- (3) A person must comply with the conditions of an exemption.
- (4) An exemption may be cancelled or corrected as if it were a permit.

20. Offences

A person who makes a false representation or declaration (whether oral or in writing), or who intentionally omits relevant information in an application for a permit or exemption is guilty of an offence.

21. Delegation

In accordance with Section 114 of the Act, the Council hereby delegates to:

- the Chief Executive Officer; and
- each Senior Officer; and
- the Environmental Health Officer; and
- statutory planners; and
- the Local Laws Officer; and
- any person for the time being acting for such persons,

all the powers, discretions, authorities and considerations of Council under this Local Law including the powers, discretions and authority to issue or refuse permits, fix conditions and durations relevant to such permits, cancel permits, require additional information, apply guidelines or policies of Council, to waive the need for any permit, to waive, fix or reduce fees or charges, to remove and impound items in accordance with this Local Law or to do any act, matter or thing necessary or incidental to the exercise of any function or power by the Council.

Part 5: Enforcement

22. Power of authorised officers to direct notice to comply

An authorised officer may, by a written notice given to a person who appears to be in breach of this local law, direct that person to remedy any situation which constitutes a breach under this local law.

23. Time to comply

- (1) A Notice to Comply must state the time and date by which the situation must be remedied.
- (2) The time required by a notice to comply must be reasonable in the circumstances having regard to:
 - (a) the amount of work involved;
 - (b) the degree of difficulty;
 - (c) the availability of necessary materials or other necessary items;
 - (d) climatic conditions;
 - (e) the degree of risk or potential risk;
 - (f) any other relevant factor.

24. Failure to comply with a notice to comply

A person who fails to comply with a Notice to Comply served on that person is guilty of an offence.

25. Power of authorised officer to act in urgent circumstances

- (1) In urgent circumstances arising as a result of a failure to comply with this local law, an authorised officer may take action to remove, remedy or rectify a situation without first serving a notice to comply if:
 - (a) the authorised officer considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a notice, may place a person, animal, property or thing at risk or in danger; and
 - (b) wherever practicable, a senior officer is given prior notice of the proposed action.

- (2) In deciding whether circumstances are urgent, an authorised officer must take into consideration, to the extent relevant:
 - (a) whether it is practicable to contact :
 - (i) the person by whose default, permission or sufferance the situation has arisen; or
 - (ii) the owner or the occupier of the premise or property affected; and
 - (b) whether there is an urgent risk or threat to public health; public safety, the environment or animal welfare.
- (3) The action taken by an authorised officer under sub-clause (1) must not extend beyond what is necessary to cause the immediate abatement of or minimize the risk or danger involved.
- (4) An authorised officer who takes action under sub-clause (1) must ensure that, as soon as practicable:
 - (a) details of the circumstances and remedying action are forwarded to the person on whose behalf the action was taken; and
 - (b) a report of the action taken is submitted to the Chief Executive Officer.

26. Power of authorised officers to impound

- (1) If an authorised officer has impounded anything in accordance with this local law, the Council may refuse to release it until the appropriate fee or charge for its release has been paid to the Council.
- (2) The Council may, by resolution, fix charges (generally or specifically) for the purposes of this clause.
- (3) As soon as possible after the impounding and where practicable to do so, the authorised officer must, serve written notice on the owner or person responsible for the item which has been impounded setting out the fees and charges payable and time by which the item must be retrieved.
- (4) If after the time required in a notice of impounding an impounded item is not retrieved, an authorised officer may take action to dispose of the impounded item according to the following principles:
 - (a) where the item has no saleable value, it may be disposed of in the most economical way; and
 - (b) where the item has some saleable value the item may be disposed of either by tender, public auction or private sale but failing sale may be treated as in paragraph (a).

- (5) When the identity or whereabouts of the owner or person responsible for the impounded item is unknown, the authorised officer must take reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with sub-clause (4) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded item.
- (6) Any proceeds from the disposal of impounded items under this local law must be paid to the owner or to the person who, in the opinion of the Council, appears to be authorised to receive the money except for the reasonable costs incurred by the Council in the administration of this Local Law.
- (7) If a person described in sub-clause (6) cannot be identified or located within six months after the date of the notice of impounding, any proceeds of the sale cease to be payable to that person, and may be retained by the Council for municipal purposes.

27. Infringement notices

- (1) An authorised officer may issue an infringement notice in the form of the notice in Schedule 1.
- (2) The fixed penalty in respect of an infringement is the amount set out in Schedule 2.

28. Payment of penalty

- (1) A person issued with an infringement notice may pay the penalty indicated to the Chief Executive Officer, Alpine Shire, PO Box 139, Bright VIC 3741.
- (2) To avoid prosecution, the penalty indicated must be paid within 28 days after the day on which the infringement notice is issued.
- (3) A person issued with an Infringement Notice is entitled to disregard the notice and defend the prosecution in Court.

29. Withdrawal of Infringement Notice

- (1) A person issued with an Infringement Notice may make a written representation to Council, the Chief Executive Officer, or Officer in Charge of Local Laws administration within 28 days of the issue of the Infringement Notice. The representation must be brought to the attention of the Chief Executive Officer.
- (2) The Chief Executive Officer may consider any written representations and any other relevant information and must consider any such material brought to his or her attention.
- (3) The decision of the Chief Executive Officer on any representations received will be final.

- (4) An Infringement Notice may be withdrawn, whether the appropriate penalty has been paid or not, at any time after the service of the Infringement Notice, by sending by post a notice in writing signed by the Authorised Officer issuing the Infringement Notice to the effect that the Infringement Notice has been withdrawn.

30. Offences

Any person who does or omits to do anything in breach of this local law, including any person who fails to comply with a Notice to Comply served pursuant to this local law, is guilty of an offence and is liable on a first offence to a penalty of not more than 10 penalty units and on a second or subsequent offence to a penalty of not more than 20 penalty units and, in the event of any such offence continuing after conviction, to a penalty of not more than 2 penalty units per day.

Schedule 1: Infringement notice

Date:

To: *[name and address]*

I, *[name of authorised officer]* have reason to believe that you have committed an offence against the Local Law No.2 Municipal Places (2012) of the Alpine Shire Council, as indicated below:

Date	Time	Clause of Local Law	Penalty
Description of the offence:			
Location of the offence:			

(Signature)

You are entitled to disregard this notice and defend the prosecution for an offence in Court.

Schedule 2: Penalties fixed for infringements

Provision	Offence	Penalty \$
7(1)	Misbehaviour in a municipal place	2 Penalty Units
7(2)	Detrimental behaviour in a municipal place	2 Penalty Units
7(3)	Trees etc interfering with a municipal place	2 Penalty Units
7(4)	Misbehaviour in a public place	2 Penalty Units
8(1)	Consume alcoholic beverage or possess unsealed container	2 Penalty Units
8(2)	Consume alcoholic beverage or possess unsealed container	2 Penalty Units
14(4)	Fail to comply with permit conditions	2 Penalty Units
19(3)	Fail to comply with exemption conditions	2 Penalty Units
20	False representation or omission of relevant information in application for a permit or exemption	4 Penalty Units
24	Fail to comply with a Notice to Comply	2 Penalty Units

**Making of Local Law No. 2 Municipal Places (2012) under section 111(1) of the
*Local Government Act 1989***

THE COMMON SEAL OF THE
ALPINE SHIRE COUNCIL was
hereunto affixed this.....day of
March 2013 in the
presence of:

.....
COUNCILLOR

.....
Name

.....
COUNCILLOR

.....
Name

.....
CHIEF EXECUTIVE OFFICER

Ian Nicholls
Name