

**LOCAL GOVERNMENT ORDINANCE 1961**

**(No. 11 of 1961)**

**AND**

**LOCAL AUTHORITY (ASSIGNMENT OF FUNCTIONS:  
THE PROVISIONS OF PARKING PLACES AND STANDS AND  
THE LICENSING OF PRIVATE PARKING PLACES) ORDER 1973**

**CITY OF KOTA KINABALU (LICENSING AND CONTROL OF  
PRIVATE CAR PARKS) BY-LAWS 2018**

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ARRANGEMENT OF BY-LAWS

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## **LOCAL GOVERNMENT ORDINANCE 1961**

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PRIVATE CAR PARKS) BY-LAWS 2018**

In exercise of the powers conferred upon him by the Local Authority (Assignment of Functions: The Provisions of Parking Places and Stands and The Licensing of Private Parking Places) Order 1973 and all the enabling powers vested by the Local Government Ordinance 1961 (No. 11 of 1961) and the City of Kota Kinabalu Enactment as (amended by the City of Kota Kinabalu Enactment 1996), the Mayor of the City of Kota Kinabalu with the approval of the Chief Minister has made the following by-laws:

### **PART I**

#### **PRELIMINARY**

#### **Citation, commencement and application**

1. (1) These by-laws may be cited as the City of Kota Kinabalu (Licensing and Control of Private Car Parks) By-Laws 2018.

(2) These By-Laws shall be come into operation on the date of its publication in the *Gazette*. [01.11.2018]

(3) These By-Laws shall be applicable to the area under the general jurisdiction of the Mayor of the City of Kota Kinabalu.

#### **Interpretation**

2. In these By-Laws -

“motor vehicle” shall have the same meaning assigned to it in the Road Transport Act 1987 [Act 333];

“Mayor” means the Mayor of the City of Kota Kinabalu.

“Ordinance” means the Local Government Ordinance 1961 (No. 11 of 1961);

“parking lot” means the space marked out in a private car park for the parking of one motor vehicle;

“person” means any individual and includes any company or association or body of persons corporate or unincorporated;

“private car park” means any land or premises or part thereof owned or occupied by any person other than the Mayor or the Government and used for the parking of 10 or more motor vehicles and to which any member of the public is admitted to park any motor vehicle whether or not subject to payment of a fee.

## PART II LICENSING

### **Prohibition of private car park without licence**

3. No person shall operate any private car park without a licence issued by the Mayor under these By-Laws.

### **Application for licence**

4. (1) An application for the issuance or renewal of a licence shall be made to the Mayor in such form and manner as the Mayor may determine and accompanied by a plan in duplicate showing the location, layout, traffic circulation, dimensions and capacity of the private car park.

(2) The Mayor may require the applicant to attend in person or in the case of a firm or body corporate, a director or any person authorised by the firm or body corporate at the time the application is made.

(3) The applicant shall make payment of the processing fee as prescribed in the Schedule upon submission of the application and it shall not be refundable irrespective of whether or not the application is approved by the Mayor.

(4) The issuance of a licence shall be at the sole discretion of the Mayor.

(5) Upon approval of the application, the Mayor may issue a licence subject to -

(a) any conditions and restrictions as may be specified therein;

(b) payment of the licence fee as prescribed in the Schedule; and

(c) payment of a deposit of such sum and in such mode of payment as the Mayor may determine to ensure that the conditions and restrictions of the licence and the provisions of these By-Laws are duly observed:

Provided that upon renewal of the licence, no further deposit shall be required.

(6) The licence shall be in such form as determined by the Mayor.

(7) The Mayor may issue a licence for any period not exceeding three years and is renewable, subject to payment of the fee as prescribed in the Schedule.

(8) The licensee shall comply with all the conditions and restrictions specified by the Mayor under sub paragraph (5)(a).

#### **Required information upon application**

5. The Mayor may require the applicant to furnish any information relating to -

(a) the hours during which the car park may be opened;

(b) the rates of charges to be collected; and

(c) any information as the Mayor may deem appropriate.

**Licence not to be transferred**

6. (1) No licensee shall transfer or otherwise part with the possession of the licence to any person except with the prior written approval of the Mayor.

(2) An application for the transfer of a licence shall be made in such form and manner as the Mayor may determine.

(3) A processing fee as prescribed in the Schedule shall be paid upon submission of the application and it shall not be refundable irrespective of whether or not the application is approved by the Mayor.

**Licence fee paid not refundable**

7. Any licence fee paid under these By-Laws shall not be refundable.

**Forfeiture of deposit**

8. (1) The Mayor may, after giving the licensee an opportunity of being heard, forfeit the deposit paid under sub paragraph 4(5)(c) in whole or in part if the Mayor is satisfied that there has been a breach of the conditions or restrictions of the licence or contravention of the provisions of these By-Laws.

(2) Upon forfeiture of such deposit the licence shall be deemed to have been cancelled, unless the Mayor, on the application of the licensee, allows the licence to continue to be in force subject to repayment of the deposit which has been forfeited.

**Refund of deposit**

9. The deposit paid under sub paragraph 4(5)(c) shall, unless forfeited under by-law 8, be refunded after the Mayor is notified in writing by the licensee that he has ceased operation of the private car park and upon surrender of the licence in the event that the licence has not expired.

**Exemption from payment of licence fee**

10. The licensee shall be exempted from payment of the licence fee where no parking charges are imposed for the use of the private car park operated or maintained by the licensee.

**Revocation or refusal to renew licence**

11. The Mayor may in his discretion revoke or refuse to renew a licence if the licensee -

- (a) has contravened any of the provision of these By-Laws;
- (b) has contravened any condition or restriction specified in the licence; or
- (c) has been convicted of an offence under these By-Laws.

#### **Display of licence**

12. The licensee shall exhibit the licence at all times at a conspicuous place in the licensed private car park.

### **PART III PREMISES**

#### **Minimum dimensions**

13. The minimum dimensions of every parking lot, circulation aisle and access ramp shall be in accordance with the standard specified by the Mayor.

#### **Cleanliness**

- 14. (1) The licensee shall keep the private car park clean and tidy at all times.
- (2) The licensee shall provide adequate garbage bins in the private car park.

#### **Alteration and addition**

- 15. (1) The licensee shall not increase or reduce the number of parking lots within the private car park without the prior written approval of the Mayor.
- (2) The licensee shall not alter the layout or dimensions of the parking lots approved within the private car park without the prior written approval of the Mayor.

#### **Obstruction**

16. The licensee shall take adequate measures to ensure that no motor vehicle is parked in any manner so as to obstruct the free flow of traffic within or in the vicinity of the private car park.

#### **Other usage not permitted**

17. The licensee shall not use or permit to be used any part of the private car park for any

purpose other than for the parking of motor vehicles without the prior written approval of the Mayor.

**Lighting and ventilation**

18. The licensee shall provide adequate lighting and if it is a covered private car park adequate ventilation to the satisfaction of the Mayor.

**Payment booths**

19. The Mayor or any officer duly authorised by him may determine the location of any payment booths to be installed in the private car park.

**Entry and exit point**

20. The Mayor or any officer duly authorised by him may determine the entry and exit point of the private car park.

**Security**

21. The licensee shall comply with all written instructions given by the Mayor to ensure that adequate security is provided in the private car park.

**Fire prevention and safety requirement**

22. The licensee shall ensure –

- (a) adequate fire fighting equipment is installed to the satisfaction of the Mayor;
- (b) all staircases, passages, landings and exits are properly maintained and kept clear of all obstructions;
- (c) adequate number of close circuit televisions is installed and maintained to the satisfaction of the Mayor; and
- (d) every door is so constructed and fitted as to be readily open..

PART IV  
ENFORCEMENT

**Power of arrest**

23. (1) The Mayor or any officer duly authorised by him may arrest without warrant any person who commits in his presence or whom he reasonably believes to have committed any offence under these By-Laws -

- (a) if the name or address of the person is unknown to him and the person declines to give his name or address; or
- (b) if there is reason to doubt the accuracy of his name or address.

(2) A person arrested under these By-Laws shall be detained and shall be brought before a Magistrate's Court within twenty-four hours unless his name and address are sooner ascertained.

**Power of seizure and forfeiture**

24. (1) The Mayor or any officer duly authorised by him may require the production by any person of the licence issued under by-law 4 for any act done or committed by such person for which such licence is required under these By-Laws.

(2) If the Mayor or any officer duly authorised by the him has reason to believe that any person has committed an offence under these By-Laws, he may seize and detain any item, tool, instrument, machinery, equipment or other thing whatsoever used or reasonably suspected of having been used in the commission of an offence.

(3) All items, tools, instruments, machinery, equipment or other things whatsoever liable to seizure under these By-Laws shall be liable to forfeiture provided that the Mayor or any officer duly authorised by him may temporarily release such item, tool, instrument, machinery, equipment or other thing to the owner of the same on security being furnished to his

satisfaction that such item, tool, instrument, machinery, equipment or other thing shall be surrendered to him on demand or to produce it before a Court a competent jurisdiction:

Provided further that if there be no prosecution with regard to anything seized under these By-Laws, such item, tool, instrument, machinery, equipment or other thing shall be taken and deemed to be forfeited at the expiration of one calender month from the date of seizure unless claim thereto is made before the date.

(4) Any person asserting that he is the owner of any item, tool, instrument, machinery, equipment or other thing liable to forfeiture under these By-Laws and that it is not liable to forfeiture may personally or by his agent authorised in writing give written notice to the Mayor that he claims the same:

Provided that any such application shall be made before the expiration of one calender month from the date of seizure.

(5) Notwithstanding anything in these By-Laws, if anything seized under these By-Laws is subject to speedy and natural decay or deterioration, the Mayor or any officer duly authorised by him may sell the thing and shall thereafter deal with the proceeds of such sale as he would have dealt with such thing had it not been sold.

(6) All things forfeited shall be delivered to the Mayor or any officer duly authorised by him and shall be sold in accordance with the provision of the Ordinance or any other law for the time being in force.

### **Penalty**

25. (1) Any person who contravenes any of the provisions of these By-Laws commits an offence and, shall on conviction, be liable to a fine not exceedings twenty thousand ringgit or to imprisonment for a term not exceeding twelve months or to both.

(2) In the case of continuing offence, the person shall be liable to a further fine not exceeding five hundred ringgit for everyday during which offence is continued after conviction.

**Compounding of offences**

26. (1) The Mayor or any officer duly authorised by him may compound any offence under these By-Laws by collecting from the person reasonably suspected of having committed such an offence a sum not exceeding five hundred ringgit.

(2) On payment of such sum of money, no further proceedings shall be taken against such person in respect of that offence.

**Closure or demolition of any premises**

27. Whenever it appears to any Magistrate that certain private car park was constructed or used in the commission of an offence under these By-Laws, he shall, upon written application made by the Mayor to close or demolish such premises, order the closure or demolition of such premises forthwith.

**SCHEDULE**

[Paragraph 4(3), sub paragraph 4(5)(b) and paragraph 6(3)]

**FEES**

(1) Processing fees:

(i) application of licence.....RM300.00

(ii) transfer of licence.....RM100.00

(2) Annual licence fee.....RM20.00 per parking lot

FOR REFERENCE ONLY AS AT JULY 2019)

Dated at Kota Kinabalu, this 3<sup>rd</sup> July 2018.

DATUK YEO BOON HAI,  
*Mayor of the City of Kota Kinabalu.*

I approve the foregoing By-Laws.

Dated at Kota Kinabalu, this 18<sup>th</sup> September 2018.

DATUK SERI PANGLIMA HAJI MOHD SHAFIE BIN HAJI APDAL,  
*Chief Minister of Sabah*

Sabah LawNet