

[Local Law Community Impact Statement (LLCIS)]

Monash City Council Smoke Free Areas Local Law (2021)

Council provides the following information to the community in respect of the Smoke Free Areas Local Law (2021).

1. INTRODUCTION

Council is proposing to make the Smoke Free Areas Local Law (2021) (**proposed Local Law**) to replace Council's current Local Law No. 4 – Prohibition on Smoking Local Law (**current Local Law**), which commenced operation on 1 October 2011.

This Community Impact Statement has been prepared to inform the community about the proposed Local Law and to assist any member of the public who may wish to make a submission to Council during the public consultation process required under the *Local Government Act 1989 (Act)*.

2. BACKGROUND

Since the commencement of the current Local Law in 2011, many changes have been made to the legislative framework which regulates smoking – especially to the *Tobacco Act 1987*. Council's priorities with respect to promoting the social sustainability of, and the health and wellbeing of residents and ratepayers in, and visitors to, its municipal district have also changed.

Council seeks to address these matters by making the proposed Local Law.

3. OVERVIEW OF PROPOSED LOCAL LAW

The objectives of the proposed Local Law are to:

- provide for the peace, order and good government of the Municipal District; and
- promote the social sustainability of the Municipal District;
- promote the health and wellbeing of residents and ratepayers in, and visitors to, its Municipal District;
- provide mechanisms for Council to declare parts of the Municipal District as smoke free; and
- revoke Council's Local Law No. 4 – Prohibition on Smoking, which commenced operation on 1 October 2011.

Under s 223 of the Act, Council is required to give public notice of the proposed Local Law and invite submissions for a period of at least 28 days.

The statutory consultation period will run from 18 February 2021 to 22 March 2021.

Anyone who makes a written submission can request to be heard in support of their submission at the Council Meeting which considers the making of the proposed Local Law, details of which will be provided.

The proposed Local Law has been reviewed by Council's lawyers who confirm that it complies with all regulatory requirements.

A copy of the proposed Local Law is attached (**Attachment 1**) to this Community Impact Statement.

4. EVALUATION OF PROPOSED LOCAL LAW

In accordance with Guidelines issued by the Minister for Local Government in relation to the making of local laws, Council has conducted an evaluation of the proposed Local Law. The evaluation is outlined in the following Table.

Issue	Evaluation
Legislative Framework	<p>The Act gives councils broad powers to make local laws with respect to any function or power of the council.</p> <p>The proposed Local Law addresses matters within Council's broad functions and powers.</p>
State legislation more appropriate	<p>State legislation compels Council to make Local Laws to address issues within its municipality. In developing the proposed Local Law, Council has not sought to address any issues which it feels are best addressed at the State or Federal level.</p>
Overlap with existing legislation	<p>The <i>Tobacco Act 1987</i> regulates smoking, including the places and circumstances in which smoking is prohibited.</p> <p>Council is satisfied that the provisions of the proposed Local Law supplement the State legislation without duplicating, overlapping or creating any inconsistency.</p>
Planning Scheme	<p>Council does not believe that any clause of the proposed Local Law overlaps with, duplicates or creates any inconsistency with the Monash Planning Scheme.</p>
Legislative Approach	<p>Council has taken a low impact regulatory approach to ensure there is minimal regulatory burden placed on the community and businesses and has approached the development of the proposed Local Law by:</p> <ul style="list-style-type: none"> • providing for reasonable penalties; and • ensuring that a minimum possible number of provisions create offences.
Performance Standards or Prescriptive Details	<p>Council has, where appropriate and possible, adopted a performance-based approach to the proposed Local Law.</p> <p>A performance based approach provides the objective that the law is expected to achieve without strict and rigid specifications for compliance.</p>
Risk Assessment	<p>No formal risk assessment has been undertaken.</p> <p>Council does not consider that there are any risks associated with the proposed Local Law.</p>

Issue	Evaluation
Measures of Success	<p>The success of the proposed Local Law will be measured to the extent it addresses community expectation and provides clear guidance to the community.</p> <p>Measures of success will include:</p> <ul style="list-style-type: none"> • monitoring the level of compliance and ease of understanding by the public; • the surveyed level of community satisfaction with community health and amenity resulting from the proposed Local Law; and • ensuring resources are available to administer and enforce the proposed Local Law.
Permits and Fees	<p>The proposed Local Law makes no provision for permits or the imposition of fees.</p>
Penalties	<p>The proposed Local Law creates three offences (cl 9) attracting a maximum penalty of 5 penalty units, with an infringement penalty of 2 penalty units.</p> <p>Council has compared the general level of penalties provided for in the proposed Local Law with the Local Laws of other like and neighbouring councils.</p> <p>Council is satisfied that penalties are similar in nature and amount to like and neighbouring councils and are sufficient to act as a deterrent for most offences while also reflecting the seriousness of those offences.</p>
Restriction of competition	<p>Smoke-free areas may attract prospective customers from other areas or discourage attendance by smokers. If the proposed Local Law has the effect of restricting competition the benefits of the restriction outweigh the disbenefits of the restriction, and can be characterised as being in the public interest.</p> <p>Council has conducted a review of the proposed Local Law in accordance with National Competition Principles and believes that, because of the nature and content of the proposed Local Law, the provisions do not otherwise restrict competition.</p>
Comparison with other Councils	<p>In drafting the proposed Local Law, Council examined Local Laws from a number of like and neighbouring councils to assess similarities and differences and ensure a reasonable degree of consistency in content, approach and penalties.</p>
Charter of Human Rights	<p>The <i>Charter of Human Rights and Responsibilities Act 2006</i> (Charter) contains twenty basic rights that promote and protect the values of freedom, respect, equality and dignity. Councils must not knowingly be in breach of these rights and must always consider them when they create laws, develop policies and deliver services.</p> <p>The proposed Local Law has been reviewed for compatibility with the Charter and is considered to be compatible with the Charter.</p>

Issue	Evaluation
Community Consultation	<p>The proposed Local Law has been prepared in consultation with Councillors, members of Council staff and Council's legal advisers.</p> <p>A community consultation process will be conducted in accordance with ss 119(2) and 223 of the Act.</p> <p>This will require Council to give public notice of its intention to make the proposed Local Law and provide members of the public with an opportunity to make a written submission to Council in relation to the proposed Local Law. Council will consider submissions received before making a final decision on the proposed Local Law.</p> <p>A person who makes a written submission is entitled to request (in the submission) to be heard by Council in support of his/her submission. When Council makes a final decision on the proposed Local Law, it must notify in writing each submitter of the decision and the reasons for the decision.</p> <p>This Community Impact Statement has been prepared to inform the community about the proposed Local Law and to assist any member of the public who may wish to make a submission to Council.</p>

5. ATTACHMENTS

- Attachment 1 - Proposed Local Law