

**OFFICERS REPORT****PROHIBITION ON SMOKING LOCAL LAW**

Submitting Councillor: Geoff Lake

**NOTICE OF MOTION**

*That Council:*

- 1) *notes that Local Law No.4 – Prohibition on Smoking (**the current Local Law**) commenced in 1 October 2011 and will sunset on 30 September 2021;*
- 2) *notes that since the commencement of the current Local Law, the Tobacco Act 1987 (Vic) (**the Act**) has undergone a series of amendments that have significantly expanded no smoking areas to the extent that parts of the Local Law may now be inoperative;*
- 3) *directs officers to draft a new Local Law that retains relevant provisions of the current Local Law and which enables Council to prescribe smoke-free areas in the municipality from time to time;*
- 4) *notes an intention, which is subject to further community and stakeholder consultation, that should the new Local Law be made, Council will use the new Local Law to remove smoking in outdoor public spaces in its activity centres;*
- 5) *directs officers to present a Community Impact Statement and draft Local Law to the January 2021 Council meeting;*
- 6) *directs officers to review and update its Footpath Trading and Access Policy (**the Policy**), including amending the guidelines for assessment and determination, to clarify that Council, in making these public areas available for trade, intends to require that food must be made available for consumption at all times when these areas are in use. For the avoidance of doubt, this change would have the effect of requiring all outdoor public dining areas to be smoke free and prevents a potential loophole following the adoption of a new Local Law whereby smoking is banned in all other public spaces in activity centres but is possible in outdoor dining areas which are designated as outdoor drinking areas; and*
- 7) *notes that, subject to community consultation and Council's further consideration, it is the current intention of Council that any changes will be implemented on 1 July 2021.*

**BUDGET IMPLICATIONS**

For the most part the motion can be delivered within existing budget constraints however there will be unbudgeted costs associated with consultation processes and the need to obtain additional legal advice as the motion is progressed. These costs cannot be met within the budget currently allocated to the

responsible departments and a cost of \$30k needs to be set allocated from Council's budget for these purposes.

#### ***IMPACT ON INTERNAL RESOURCES***

The motion will require reprioritising a range of planned works however will not impact on internal or external resources.

#### ***COUNCIL PLAN AND COUNCIL POLICIES***

The Notice of Motion requests amendments to the Footpath Trading and Access Policy being the only relevant policy at this point in time. Nonetheless the outcomes of the motion can be linked to the following Council Plan objectives:

##### *A Liveable & Sustainable City:*

We value our natural environment and want to preserve and enhance the leafy and green character of our city. Monash's desirability as a place to live, learn, work and play needs to be protected.

##### *Inviting Open & Urban Spaces:*

We will continue to improve our public infrastructure, meeting places and open spaces, providing inclusive, safe and inviting places for community use.

##### *An Inclusive Community:*

Our people and our communities are healthy, connected and engaged.

#### ***RELEVANCE TO WORK ALREADY UNDERTAKEN BY OFFICERS OR COMMITTEE***

A review of Local Law No.4 – Prohibition on Smoking is already underway and the motion will expedite the process of making a new local law before it before it sunsets in September 2021.

At Council's request officers conducted a similar review of the Footpath Trading and Access Policy to achieve like outcomes in 2017 and therefore much of the policy work is done.

#### ***FURTHER CONSIDERATIONS***

The review of the Footpath Access and Trading Policy conducted in 2018 reflected Council's desire to ensure that outdoor trading areas be used for outdoor dining where the service of food is available for the consumption at all times. This was to ensure the vibrancy and popularity of outdoor dining destinations in much the same way this has been outlined in the Motion.

The proposed changes were the subject of a public consultation process during which a traders inability to operate outdoor dining areas where a person may smoke was a matter of significant concern raised by Oakleigh traders and many of their patrons. Council considered the outcome of public consultation at its meeting on 26 June 2018 and amongst other things it noted that 94.58% of submissions received did not support the changes proposed in the Revised Footpath Trading and Access Policy 2018 generally because of the effect it would have on smoking in outdoor trading areas. No further decisions were made on the matter.