

**MONASH CITY COUNCIL**

**SMOKE FREE AREAS LOCAL LAW (2021)**

**DRAFT**

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# **SMOKE FREE AREAS LOCAL LAW (2021)**

## **PART 1 – PRELIMINARY PROVISIONS**

### **1. TITLE**

This Local Law will be known as the “Smoke Free Areas Local Law”.

### **2. PURPOSE**

The purpose of this Local Law is to:

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

### **3. AUTHORISING PROVISION**

This Local Law is made under s 111(1) of the Act.

### **4. COMMENCEMENT AND AREA OF OPERATION**

- 4.1 This Local Law:
  - 4.1.1 commences on the day following the notice of its making being published in the Victoria Government Gazette; and
  - 4.1.2 operates throughout the Municipal District.
- 4.2 For the avoidance of doubt, this Local Law is inoperative and does not apply to the extent that it is inconsistent with any other applicable Act or regulation, or the Monash Planning Scheme.

### **5. REVOCATION DATE OF THIS LOCAL LAW**

This Local Law ceases to operate on the day that is 10 years after its commencement date unless revoked earlier by Council.

### **6. REVOCATION OF EARLIER LOCAL LAW**

Council’s Local Law No. 4 – Prohibition on Smoking, which commenced operation on 1 October 2011, is revoked.

### **7. DEFINITIONS**

“Acceptable No Smoking Sign” has the same meaning as in the *Tobacco Act 1987*.

“Act” means the *Local Government Act 1989*.

“Authorised Officer” means a person appointed by Council as an authorised officer under s 224 of the Act.

“Council” means the City of Monash.

“Council Land” means any land owned or otherwise under the control and management of Council.

“E-Cigarette” has the same meaning as in the *Tobacco Act 1987*.

“Event” means an organised recreational, cultural, commercial or social event or gathering of people, including a carnival, festival, street party, procession or any similar activity.

“Municipal District” means the municipal district of Council.

“Penalty Units” has the same meaning as in the *Sentencing Act 1991*.

“Smoke” has the same meaning as in the *Tobacco Act 1987*.

“Smoke Free Area” has the meaning ascribed to it by clause 8.1 of this Local Law.

“Tobacco Product” has the same meaning as in the *Tobacco Act 1987*.

## **PART 2 – SMOKE FREE AREAS**

### **8. PRESCRIBING SMOKE FREE AREAS**

8.1 In this Local Law, Smoke Free Area means any area within the Municipal District that is:

8.1.1 within 10 metres of the entrance to any building owned by, or under the control and management of, Council;

8.1.2 Council Land on, and during the times at, which an Event organised or sponsored by Council is held; and

8.1.3 prescribed by resolution of Council to be a Smoke Free Area for the purposes of this Local Law.

8.2 When determining whether to prescribe a Smoke Free Area for the purposes of clause 8.1.3 of this Local Law, Council must have regard to the following factors:

8.2.1 the size of the proposed Smoke Free Area;

8.2.2 the proximity of the proposed Smoke Free Area to a public place, part or all of which is not in a Smoke Free Area;

8.2.3 the views of any person who is the owner or occupier of any part of the proposed Smoke Free Area;

8.2.4 the extent and outcome of any community engagement on the proposal to prescribe the Smoke Free Area;

8.2.5 any benefits to the community which would be achieved by Council prescribing the proposed Smoke Free Area; and

8.2.6 any detriment to the community which would be caused by Council prescribing the proposed Smoke Free Area.

8.3 Council or an Authorised Officer may erect, or cause to be erected, an Acceptable No Smoking Sign in a Smoke Free Area.

## 9. NO SMOKING IN SMOKE FREE AREAS

9.1 A person must not smoke a Tobacco Product or an E-Cigarette in a Smoke Free Area.

**Penalty: 5 Penalty Units**

9.2 A person who is the owner or occupier of land in a Smoke Free Area must not suffer or permit, whether personally or by their employees, contractors or agents, a person to smoke a Tobacco Product or an E-Cigarette on that land.

**Penalty: 5 Penalty Units**

9.3 Where an Authorised Officer believes on reasonable grounds that a person is contravening or has contravened clause 9.1, the Authorised Officer may direct the person to:

9.3.1 in the case of a Tobacco Product, extinguish and then dispose of the Tobacco Product; or

9.3.2 in the case of an E-Cigarette, cease using the device.

9.4 A person to whom a direction is given under clause 9.3 must comply with that direction.

**Penalty: 5 Penalty Units**

## PART 3 – ENFORCEMENT

### 10. INFRINGEMENTS

10.1 Where a person engages in conduct constituting an offence against this Local Law, an Authorised Officer may, as an alternative to prosecution, issue the person with an infringement notice in accordance with the *Infringements Act 2006*.

10.2 The penalty for an infringement notice issued under clause 10.1 is two Penalty Units.