

Management report to Council

Agenda item 6.4

Activities (Miscellaneous Amendments) Local Law 2015

Council

Presenter: Kim Wood, Chief Legal Counsel

28 July 2015

Purpose and background

1. The purpose of this report is to request the Council make the Activities (Miscellaneous Amendments) Local Law 2015 (Amending Local Law) (Attachment 2).

Key issues

2. On 3 March 2015, the Future Melbourne Committee passed the following resolution:
That the Future Melbourne Committee, pursuant to Part 5 of the Local Government Act 1989, proposes to make the Activities (Miscellaneous Amendments) Local Law 2015 at Attachment 2 of the report from management for the purposes of the statutory public notice and submission process, subject to an amendment to proposed clause 5.9 (b) to add the word "unreasonably" before the word "obstruct". Further, this Committee requests that management provide a statement to this Committee or Council (whichever considers the submissions arising from the statutory public notice period), assessing the compatibility of the amended Local Law with the Victorian Charter of Human Rights.
3. Public Notice of the Amending Local Law was placed in the Age and the Victorian Government Gazette on 26 March 2015 and on Council's website on 19 March 2015. Two submissions were received in response (Attachment 3).
4. The Submissions (Section 223) Committee having considered the submissions received, has recommended that Council make the Amending Local Law subject to a minor typographical correction. A copy of the Principal Local Law incorporating the changes made by the Amending Local Law is at Attachment 4.
5. In accordance with the resolution of the Future Melbourne Committee of 3 March, a charter assessment has been undertaken of the Principal Local Law as amended by the Amending Local Law (Attachment 5). In addition to assessing compatibility with the *Charter of Human Rights and Responsibilities Act 2006*, commentary is included on compatibility with the implied rights of political communication in the Australian Constitution.

Recommendation from management

6. That Council:
 - 6.1. Makes the *Activities (Miscellaneous Amendments) Local Law 2015* amending the Council's *Activities Local Law 2009* (Principal Local Law) as advertised in The Age on 26 March 2015 subject to the addition of a clause amending clause 7.3 of the Principal Local Law by deleting the reference to 'within 39 meters' and substituting 'within 39 metres', for the reasons that the changes improve the operation of the Principal Local Law by:
 - 6.1.1. consolidating and expanding the provisions in respect to animals
 - 6.1.2. improving the clarity of various provisions and defined terms
 - 6.1.3. better articulating how the Principal Local Law applies to vehicles, toy vehicles, vessels, bicycles and other forms of transportation
 - 6.1.4. deleting references to clauses revoked by previous amendments
 - 6.1.5. making various grammatical changes to improve the consistency of language used.
 - 6.2. Notes the assessment of the Principal Local Law as amended, indicating its compatibility with the *Charter of Human Rights and Responsibilities Act 2006*.
 - 6.3. Notes that each submitter will be advised in writing of the decision to make the local law and the reasons for that decision.

Attachments:

1. Supporting Attachment
2. Amending Local Law
3. Submissions received
4. Principal Local Law as amended by the Amending Local Law
5. Charter assessment

Supporting Attachment

Legal

1. The Amending Local Law is made in accordance with the statutory process set out in the *Local Government Act 1989*.

Finance

2. The cost of placing notices of the making of the Amending Local Law in the newspaper (The Age) and the Government Gazette will be absorbed within the current budget.

Conflict of interest

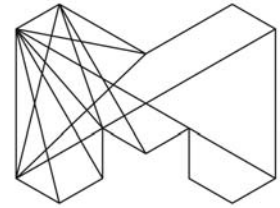
3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

4. Public Notice of the Amending Local Law was placed in the Age and the Victorian Government Gazette on 26 March 2015 and one week earlier on the Council's website.

Environmental sustainability

5. No direct environmental sustainability issues arising from the recommendation from management.



CITY OF MELBOURNE

MELBOURNE CITY COUNCIL

ACTIVITIES (MISCELLANEOUS AMENDMENTS) LOCAL LAW 2015

ACTIVITIES (MISCELLANEOUS AMENDMENTS) LOCAL LAW 2015

AMENDING LOCAL LAW

PART A

PRELIMINARY

Title

- 1.1 This Local Law is called the "*Activities (Miscellaneous Amendments) Local Law 2015*."

What are the objectives of this Local Law?

- 1.2 This Local Law is made for the purposes of amending the Melbourne City Council Activities Local Law 2009 so as to:
- (a) provide for controls on the management of animals;
 - (b) make miscellaneous changes to clarify the intent and purpose of various provisions;
 - (c) make other minor corrections; and
 - (d) provide for the peace, order and good government of the *municipality*.

What authorises this Local Law?

- 1.3 This Local Law is made under section 111 of the *Local Government Act 1989*.

When does this Local Law commence?

- 1.4 This Local Law commences on the date of its publication in the Victorian Government Gazette.

Sunset Provision

- 1.5 This Local Law ceases to operate when the Melbourne City Council Activities Local Law 2009 ceases to operate.

To what part of the *municipality* does this Local Law apply?

- 1.6 This Local Law applies throughout the whole of the *municipality*.

Definitions

- 1.7 The words identified throughout this Local Law are intended to have the following meaning:

"*Principal Local Law*" means the Activities Local Law 2009.

PART B

AMENDMENTS TO PRINCIPAL LOCAL LAW

2.1 In clause 1.2 of the *Principal Local Law*:

(a) Insert a new sub-clause (g):

(g) regulate the number and manner of keeping of *animals*;

(b) Re-number the existing sub-clause (g) and following sub-clauses as a result of the above insertion.

2.2 Amend clause 1.3 by adding the word “the” prior to the word “*Council’s*”.

2.3 In clause 1.11 of the *Principal Local Law*:

(a) Amend sub-clause (b) of the definition of “*Authorised Officer*” by inserting at the commencement, the words:

in respect to the enforcement of Part 3 of this Local Law,

(b) Immediately before the definition of “*Body of water*”, insert the following:

“*bicycle*” has the same meaning as in the *Road Safety Road Rules 2009*.

(c) Delete the words “*Central Business District*” and substitute “*central city*”.

(d) Amend the definition of “*Construction Management Plan*” by deleting the word “*Council’s*” in sub-clause (d).

(e) Amend the definition of “*Environment Local Law*” by deleting the words “*Melbourne City Council*” and substituting “*Council’s*”.

(f) Amend the definition of “*gas regulator vent stack*” by adding the word “the” prior to the word “*Council*”.

(g) Delete the current definition of “*liquor*” and substitute the following new definition:

“*liquor*” means a beverage intended for human consumption with an alcoholic content of 0.5 per centum by volume or greater.

(h) Immediately before the definition of “*Municipality*” insert:

“*moor*” means to hold, tether, berth or secure a *vessel* in a location by a cable, chain, anchor or other means.

(i) Amend the definition of “*Notice to Comply*” by deleting the words “clause 14.13” and substituting “clause 14.9”.

(j) Amend the definition of “*Nuisance*” by adding the word “the” prior to the word “*Council*” in sub-clause (d).

(k) Immediately after the definition of “*Plan*” insert:

“*Planning Scheme*” means an applicable planning scheme under the *Planning and Environment Act 1987*.

(l) Amend the definition of “*Road*” by deleting the words:

and includes a pavement

(m) Immediately before the definition of “*Sell*” insert the following new definitions:

“sailboard” means a surfboard or other light weight device equipped with a sail designed to be propelled on water and includes a windsurfer.

“segway” means a two-wheeled, self-balancing electric form of transportation.

(n) Amend the definition of “*Special Event*” by adding the word “the” prior to the word “*Council*”.

(o) Amend the definition of “*Standards*” by:

a. renaming the defined term “*design and construction standards*”; and

b. moving the definition so it appears immediately prior to the definition of “*Encroachment*”.

(p) Amend the definition of “*Toy vehicle*” by inserting the words:

a. “on land” immediately after the word “propelled”;

b. “but does not include a *bicycle*” immediately after the words “in-line skates”.

(q) Amend the definition of “*Vehicle*” by inserting the words “*bicycle*,” after the words “shopping trolley”.

(r) Amend the definition of “*vessel*” by inserting the words:

a. “means a craft for travelling on water and”, immediately before the word “includes”;

- b. “but does not include a *sailboard* or *ski*” immediately after the word “catamaran”.
- (s) Amend the definition of “*wheelchair*” by:
 - a. inserting the words “capable of a speed of no greater than 10 kilometres per hour” immediately before the word “propelled”;
 - b. deleting the words “capable of a speed of no greater than 7 kilometres per hour” immediately after the word “disability”.
- (t) Delete the semicolon at the end of the definitions of “*acceptable no smoking sign*”, “*child care centre*”, “*children’s playground*”, “*smoke*”, “*smoke free area*” and “*tobacco product*” and in each case substitute a full stop.

2.4 In Part 2 of the *Principal Local Law*:

- (a) Amend the Note appearing beneath clause 2.6 by adding the word “the” prior to the word “Council’s”.
- (b) Delete clauses 2.7, 2.8 and 2.9 and the heading “Animals” and renumber clauses 2.10 – 2.14 as a result of the deletion;
- (c) Amend the heading to what is now clause 2.9 by deleting “Fencing Vacant Land” and substituting “Fencing vacant land”.
- (d) Amend what is now clause 2.10 by:
 - a. deleting the heading “Fences At Intersections” and substituting “Fences at intersections”;
 - b. sub-clause (b) being renumbered as sub-clause (a)(iii);
 - c. sub-clause (c) being renumbered as sub-clause (b).
- (e) Amend what is now clause 2.11 by deleting “2.12 or 2.13” and substituting “2.9 or 2.10”.

2.5 In Part 3 of the *Principal Local Law*:

- (a) Amend clause 3.1 by adding the word “the” prior to the word “*Council*”.
- (b) Amend the Note beneath clause 3.1 by adding the word “the” prior to the words “Council’s web site” in both instances.
- (c) Amend clause 3.2(c) by adding the word “the” prior to the word “*Council*”.

2.6 In Part 3A of the *Principal Local Law*:

- (a) Amend clauses 3A.3 by adding the word “the” prior to the word “*Council*”.

- (b) Amend clauses 3A.4 and 3A.5 by adding the word “The” prior to the word “Council” wherever it appears.
- (c) Amend the Note beneath clause 3A.5 by deleting the full stop where it appears after www.melbourne.vic.gov.au

2.7 Insert a new Part 3B in the *Principal Local Law* immediately after Part 3A as follows:

PART 3B

ANIMALS

Introduction: This Part aims to provide for the responsible care and management of *animals* within the *municipality* including regulating the number and types of *animals* a *person* may keep without a *permit*.

Application of Part 3B

3B.1 This Part does not apply to any land:

- (a) on which a pet shop is located;
- (b) on which an animal hospital or veterinary practice is located; or
- (c) if the use of the land for this purpose is permitted under the *Planning Scheme*.

Keeping of *animals*

3B.2 A *person* must not, without a *permit*, keep or allow to be kept any more of each species or group of *animal* than *prescribed* by the *Council*.

3B.3 Any structure used for housing an *animal* must be maintained:

- (a) in a clean, inoffensive and sanitary condition;
- (b) so as not to cause any *nuisance*; and
- (c) to the satisfaction of the *Council*.

animals* in a *public place

3B.4 A *person* must not feed or leave food for an *animal* in a *public place*.

3B.5 Whenever an *animal* is in or on a *public place*, the owner of the *animal* must have in his or her possession means for the effective collection and removal of any excrement that may be deposited by the *animal*.

3B.6 The owner of an *animal* must immediately collect and remove all excrement deposited by the *animal* in a *public place*.

3B.7 For the purposes of clauses 3B.5 and 3B.6:

- (a) the owner of an *animal* includes the *person* who has the *animal* in his or her care for the time being whether the *animal* is restrained, confined or at large; and
- (b) *animal* does not include a bird, fish or reptile.

2.8 In Part 4 of the *Principal Local Law*:

- (a) Delete the word “Melbourne” wherever it appears before the words “Planning Scheme”.
- (b) Amend clause 4.3 by adding the word “the” prior to the word “*Council*” where it first appears.
- (c) Amend clause 4.9 by deleting the words “*place* or allow to be *placed*” and substituting “place or allow to be placed”.

2.9 In Part 5 of the *Principal Local Law*:

- (a) Amend clause 5.3 by inserting immediately after the words “in a *public place*” the words “or from *premises* adjacent to a *public place* to a *person* in a *public place*”;
- (b) Amend clause 5.5 by adding the word “the” prior to the word “*Council*”.
- (c) After clause 5.5(b) insert the following note:

Note: The *Council* will take into account the *Filming Approval Act 2014* in considering an application for a *permit* under clause 5.5(b).

- (d) Delete the existing clause 5.9 and substitute the following new clause:

5.9 A *person* must not:

- (a) without a *permit*, unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic in or on a *public place*; or
- (b) invite, encourage or allow the congregation of *persons* so as to unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic in or on a *public place*.

2.10 In Part 6 of the *Principal Local Law*:

- (a) In clause 6.1(g), delete the word “*vehicle*”.

2.11 In Part 7 of the *Principal Local Law*:

- (a) Delete the word “*Standards*” wherever it appears and substitute the words “*design and construction standards*”.
- (b) Amend clause 7.3 by deleting the words ‘within 39 meters’ and substituting ‘within 39 metres’.

2.12 In Part 8 of the *Principal Local Law*:

- (a) Amend clause 8.1(b) by deleting the word “*place*” and substituting “place”.
- (b) Delete the existing clause 8.4 and substitute the following new clause:

8.4 A person must not take a *sailboard* or *ski* onto a *body of water* other than in an area *prescribed* by the *Council* as being an area set aside for *sailboards* or *skis*.

2.13 In Part 9 of the *Principal Local Law*:

- (a) Amend the Note beneath clause 9.2 by adding the word “The” prior to the word “*Council*”.
- (b) Amend clause 9.7 by adding the word “the” prior to the word “*Council*”.

2.14 In Part 10 of the *Principal Local Law*:

- (a) Delete the words “clause 14.13” wherever they appear and substitute “clause 14.9”;
- (b) Amend clause 10.4(b) by adding the word “the” prior to the word “*Council*”.
- (c) In clauses 10.8(a) and (b) delete the comma at the end of the clause and substitute a semicolon.

2.15 In Part 11 of the *Principal Local Law*:

- (a) In the heading to clause 11.2, delete the word “Numbering” and substitute the word “numbering”

2.16 In Part 12 of the *Principal Local Law*:

- (a) Amend the introduction by deleting the words “the Local Law” and substituting “this Local Law”.
 - (b) delete the existing clause 12.2 and substitute the following new clause:
 - 12.2 Unless in accordance with a *permit*, a *person* must not:
 - (a) bring a *vehicle* into or on or allow it to remain in or on a *public place*; or
 - (b) ride a *segway* or *bicycle* in or on a *public place*,except:
 - (c) where that *public place* is a road or road related area; or
 - (d) in the case of a *bicycle*, where that *public place* is a pathway designated for use by *bicycles*.
 - (c) In clause 12.3:
 - a. delete the words “clause 12.2(a), road and road related area has the meaning” and substitute “clause 12.2(c), road and road related area have the meanings”
 - b. insert a full stop at the end of the sub-clause.
 - (d) In clause 12.13, delete “*Central Business District*” and substitute “*central city*”
 - (e) In clause 12.14, delete the words “clause 12.13” and substitute “clause 12.12”.
 - (f) Delete the existing clause 12.15(c) and substitute:
 - (c) airtight, securely closed and sealed; and
 - (g) In clause 12.16, delete the words “clause 12.15” and substitute “clause 12.14”.
 - (h) Amend clauses 12.10, 12.12, 12.13(a), 12.16 and 12.17 by adding the word “the” prior to the word “*Council*” wherever it appears.
 - (i) In clause 12.17, after the word “hours” insert “in the *central city* or other area *prescribed* by the *Council* and 24 hours in all other locations”.
 - (j) Delete the reference to the previously repealed clause 12.9 and renumber clauses 12.10 – 12.17 as a result of the deletion.
- 2.17 In Part 14 of the *Principal Local Law*:
- (a) In clause 14.9, delete the words “clause 14.8” and substitute “clause 14.4”.

- (b) In clauses 14.14 – 14.18 delete the words “clause 14.13” wherever they appear and substitute “clause 14.9”.
- (c) In clause 14.15, delete the words “the Local Law” wherever they appear and substitute “this Local Law”.
- (d) In clause 14.20, delete the words “clause 14.19” and substitute “clause 14.15”.
- (e) Delete the existing clause 14.21 and substitute:

14.21 Where a *person* owning or responsible for items, goods, equipment, *vessel*, *bicycle* or other property or thing has ignored a direction from an *authorised officer* to remove them, the items, goods, equipment, *vessel*, *bicycle* or other property or thing may be confiscated and impounded.
- (f) In clause 14.22 insert immediately after the word “charge” the words “*prescribed by the Council*”.
- (g) Delete the reference to the previously repealed clauses 14.3 – 14.6 and renumber clauses 14.7 – 14.24 as a result of the deletion.

2.18 Delete the existing table in Schedule 1 to the Principal Local Law and substitute:

Clause	Offence	Penalty (Penalty Units)
2.1; 2.2	Prohibited activities in <i>public places</i>	2.5
2.3	Misuse of <i>toy vehicles</i>	1
2.7	Destroying or causing damage to <i>trees</i>	5
2.8	Camping in <i>public places</i>	2.5
2.9	Fencing vacant land	5
2.10	Fences at intersections	2
3.1; 3.3	Consumption / possession of <i>liquor</i> in prohibited area	1
3A.1	<i>smoke</i> in a <i>smoke free area</i>	1
3B.2	Keeping of <i>animals</i>	2.5
3B.3	Housing of <i>animals</i>	2.5
3B.4	Feeding of <i>animals</i> in a <i>public place</i>	1

3B.5; 3B.6	<i>animal waste disposal</i>	2.5
4.1	Unauthorised <i>advertising sign</i> or thing on or between <i>buildings</i>	5
4.2	Unauthorised display of <i>street art</i> in, or within view from, a <i>public place</i>	10
4.6	Unauthorised portable <i>advertising sign</i> or other thing in <i>public place</i>	2.5
4.7; 4.9	Unauthorised display of <i>goods</i> in a <i>public place</i>	5
5.1	Soliciting/collecting for money or subscription or <i>selling</i> a raffle ticket without a <i>permit</i>	2.5
5.2	Soliciting trade, or <i>touting</i> or <i>spruiking</i> without a <i>permit</i>	5
5.3	<i>selling</i> without a <i>permit</i> in a <i>public place</i>	5
5.4	Distribution/display of <i>handbills</i> without a <i>permit</i>	5
5.5	Filming or conducting a <i>special event</i> without a <i>permit</i>	5
5.6	Busking without a <i>permit</i>	5
5.7	Causing excessive noise	5
5.9	Causing pedestrian / vehicular obstruction	5
5.10	Placing furniture in a <i>public place</i> without a <i>permit</i>	10
6.1	<i>road works</i> undertaken without a <i>permit</i>	10
7.1	Failure to comply with the <i>Code</i>	20
7.2	Failure to comply with the <i>design and construction standards</i>	20
7.3	Failure to refer application to the Office of Gas Safety	10
8.1	Water activities without a <i>permit</i>	2.5
8.2	<i>mooring</i> without a <i>permit</i>	10
8.3	Prohibited behaviour on a <i>vessel</i>	5
8.4	Prohibited activities on water	5
9.1	Failure to give 48 hours notice before commencing <i>building works</i>	10

9.4	Failure to comply with a <i>construction management plan</i>	20
9.5	<i>building works</i> out of hours without a <i>permit</i>	20
9.6	<i>building works</i> on a dwelling out of hours	5
9.7	<i>building works</i> carried out on a dwelling exceeding the <i>designated sound level</i>	10
9.8	Dirty wheels / undercarriage of construction <i>vehicles</i>	10
9.9	<i>building works</i> creating a <i>nuisance</i>	10
11.1	Unauthorised naming of <i>roads</i>	2.5
11.3; 11.4	Failure to clearly number <i>premises</i>	2.5
11.6	Interference with numbers or street signs	2.5
12.1	Unauthorised discharge of material in a <i>public place</i>	10
12.2	<i>vehicle, bicycle</i> or <i>segway</i> without a <i>permit</i> in or on a <i>public place</i>	2.5
12.4	Repairing a <i>vehicle</i> on a <i>road</i>	5
12.5	Interfering with a <i>pedestrian service sign</i>	2.5
12.7	General obstructions from <i>premises</i> into a <i>public place</i>	2.5
12.8	Causing excessive noise	5
12.9	Delivery or collection of <i>goods</i> causing a <i>nuisance</i>	20
12.10	Collection of <i>waste</i> from <i>premises</i>	20
12.11	Collection of <i>waste</i> from <i>prescribed</i> area	20
12.12	Collection of <i>waste</i> from <i>prescribed</i> area or <i>central city</i>	20
12.14	Leaving <i>waste container</i> in or on <i>public place</i>	10
12.15	requiring <i>waste container</i> be locked in <i>prescribed</i> areas	10
12.16	Leaving <i>waste container</i> for more than the permitted time	10
2.11,14.9,	Failure to comply with a <i>Notice to Comply</i>	10

14.14		
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2.19 In Schedule 2 of the *Principal Local Law*:

- (a) In factor 2 in Part B, immediately after the words “*smoke free area*”, insert the words “or the area immediately adjoining the proposed *smoke free area*”.
- (b) Add the word “the” prior to the word “*Council*” wherever it appears.

2.20 Amend the *Plan* appended to the *Principal Local Law* by:

- (a) Deleting the words “DRAFT AMENDMENTS TO LOCAL LAW WASTE DISPOSAL”
- (b) Deleting “Date 06-08-2009”.

2.21 Amend all words defined in clause 1.1 of the *Principal Local Law* wherever they appear in the *Principal Local Law* so that all such words:

- (a) Appear in lower case save:
 - a. where appearing in the heading to any Part of the *Principal Local Law*, and
 - b. for the following, “*Act*”, “*Code*”, “*Council*”, “*Council land*”, “*Environment Local Law*”, “*Notice to Comply*” and “*Planning Scheme*”.
- (b) Appear in italics with the exception of:
 - a. the word “road” when used in clauses 2.4, 2.5, 2.6, 12.2(c) and 12.3;
 - b. the word “owner” when used in clauses 3B.5, 3B.6 and 3B.7(a); and
 - c. the word “permit” wherever it appears immediately after the word “planning”.

Manager Governance Services
Melbourne City Council
GPO Box 1603,
Melbourne, VIC 3001

Submission to the City of Melbourne, on the proposal to amend their Local Law 2009

To Manager of Governance Services,

Thank you for the opportunity to state my views on the proposal to amend the Local Law 2009:

(d) Delete the existing clause 5.9 and substitute the following new clause:

5.9 A person must not:

(a) without a permit, unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic in or on a public place; or

(b) invite, encourage or allow the congregation of persons so as to unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic in or on a public place. (in the current Law)

I have phoned Mr. Kim Wood on the 14th of April from the Legal department of Melbourne City Council regarding this new clause 5.9(a)

I asked the question about people who chose to peacefully assemble and pray outside of the Fertility Control Clinic and offer pamphlets to people who are going in. Kim has said this proposed clause is aimed at people who unreasonably block footpaths in the city.

In writing this submission I just want to uphold my position as it states in the **CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 - SECT 15 Freedom of expression**

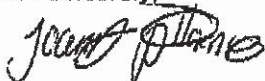
(1) Every person has the right to hold an opinion without interference.

(2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria

When we pray outside of abortion clinics it is always done peacefully, with compassion and with gentle & genuine offers of help – which can often be their last and only hope. We always respect the privacy of the people, patients and staff. It is a democratic right of protesters to freedom of expression in sections 15(2) and 16. Peaceful assembly and freedom of association (in the Charter of Human Rights/Responsibilities Act).

Thank you and I look forward to a reply (in writing) to my submission.

Yours sincerely,



Joanne Di Lorenzo

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Wantirna South, VIC 3152

27th April, 2015

Manager Governance Services
Melbourne City Council
GPO Box 1603,
Melbourne, VIC 3001

Regarding: 'proposed Activities (Miscellaneous Amendments) Local Law 2015'

Dear Manager of Governance Services,

I am writing to you and making a submission as outlined at the Council's webpage:
www.melbourne.vic.gov.au/AboutCouncil/Meetings/Pages/PublicNotices.aspx .

Referring specifically to the proposed amendment, part : "(e) provide that a person must not without a permit unreasonably obstruct the use of a public place by others" I would like to make important comments that should be considered and entered into the record. I request a response (in writing) to them.

The democratic right to peaceful assembly; the right to freedom of expression; the right to freedom of conscience/religion/belief and to pray for and see if people are in need of assistance, especially for those in desperate need – for example, those entering abortion clinics; and to protest unfair/bad laws – for example, outside the Victorian Parliament, must continue to be upheld and allowed and not interfered with by this proposed amendment.

In all of these/my activities, respect for others, respect for the privacy of others, respect for the safety of others – for example, providing adequate space for pedestrians to move freely and thereby not obstructing public spaces, is always maintained. Exercising these rights responsibly (as described in these paragraphs) and respecting the rights of others, cannot be deemed to be an unreasonable obstruction of a public place and/or a nuisance.

Thank you for the opportunity to make a submission.
Yours sincerely,

Jeremy Orchard
(03) 9801-3891

MELBOURNE CITY COUNCIL

ACTIVITIES LOCAL LAW 2009

(INCORPORATING AMENDMENTS UP TO AND INCLUDING THE **PROPOSED**
ACTIVITIES (~~SMOKING AND~~ MISCELLANEOUS AMENDMENTS) LOCAL LAW
2015~~2~~)

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Law 2009

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MELBOURNE CITY COUNCIL

ACTIVITIES LOCAL LAW 2009

(INCORPORATING AMENDMENTS UP TO AND INCLUDING THE PROPOSED
ACTIVITIES (~~SMOKING AND MISCELLANEOUS AMENDMENTS~~) LOCAL LAW
2015~~2~~)

PART 1

PRELIMINARY

Title

1.1 This Local Law is called the “Activities Local Law 2009”.

What are the objectives of this Local Law?

1.2 The objectives of this Local Law are to:

- (a) promote a physical and social environment free from hazards to health, in which the residents of and visitors to the *municipality* can enjoy a quality of life that meets the general expectations of the community;
- (b) control noise, behaviour, *liquor* consumption, *animals*, *spruiking*, busking, *advertising sign*, works and obstructions on *roads*, street trading, the use of *toy vehicles* and other activities;
- (c) protect the use of *public places* and control activities in or near them;
- (d) provide for safety in *public places*;
- (e) regulate and manage the legitimate display of *street art*, in or within view from, a *public place* so as to facilitate a vibrant urban culture;
- (f) provide for, control and manage the use of *premises* and *vehicles* in particular circumstances;
- ~~(f)~~(g) regulate the number and manner of keeping of *animals*;
- ~~(g)~~(h) control, prevent and abate *nuisances*; and
- ~~(h)~~(i) provide for the peace, order and good government of the *municipality*.

1.3 This Local Law contributes to **the Council's** long term and responsible approach to the ongoing health, vitality, prosperity, security and welfare of the city's residents, businesses and environment.

What authorises this Local Law?

1.4 This Local Law is made under the provisions of Part 5 of the *Local Government Act 1989*.

When does this Local Law commence?

1.5 This Local Law commences on the first day of July 2009.

To what part of the *municipality* does this Local Law apply?

1.6 Subject to clauses 1.7, 1.8 and 1.9, this Local Law applies throughout the whole of the *municipality*.

1.7 Clauses 3.1 to 3.3 inclusive apply as follows:

- (a) to that part of the *municipality* which is *prescribed* by the *Council* for the purposes of this clause 1.7(a), throughout the whole of each year; and
- (b) to that part of the *municipality* which is prescribed by the *Council* for the purposes of this clause 1.7(b), during:
 - (i) prescribed days or periods; or
 - (ii) on each day during the race period within the meaning of the *Australian Grand Prix Act 1994* (or its successor legislation) and to 8.00 a.m. on the day immediately following the last day of the race period; or
 - (iii) on any day during the period specified in a notice signed by the *Council's* Chief Executive Officer as being the period during which Melbourne Moomba Waterfest or any other festival is to occur and to 8.00 a.m. on the day immediately following the last day of the period specified in the notice.

Are there any exemptions from this Local Law?

1.8 Nothing in this Local Law prevents a member, officer or employee of:

- (a) the Commonwealth or State Government;
- (b) the Victoria Police;
- (c) the Metropolitan Fire Brigade;
- (d) the Ambulance Service - Victoria;
- (e) any first-aid or emergency service organisation;
- (f) any military or civil-defence force; or
- (g) a *public body* other than the *Council*;

from performing any of the duties he or she is lawfully entitled or required to perform while engaged in those duties, provided that:

- (i) 48 hours notice of the person's intention to perform the activity is given to the *Council* beforehand, or
- (ii) in the event of an emergency, notice is given as soon as practicable after the activity has been carried out.

1.9 Nothing in this Local Law relating to an *animal* prevents:

- (a) a blind or deaf *person* being entitled at all times and in all places to be accompanied by a guide dog; or
- (b) a member of the Victoria Police in charge of a police dog or police horse from carrying out police duties.

1.10 The *Council* may *prescribe* specified *persons*, *premises* or areas within the *municipality* to be exempt from a provision of this Local Law for a specified time and on specified conditions.

Definitions

1.11 The words identified in italics throughout this Local Law are intended to have the following meaning:

"*acceptable no smoking sign*" has the same meaning as in the *Tobacco Act 1987*.

"*Act*" means the *Local Government Act 1989*.

"*Advertising sign*" includes any letter, figure, symbol, device, poster, sign, banner or message used for notifying:

- (a) the existence of the sale or use of any *goods* or services; or
- (b) the holding of an event or function; or
- (c) the promotion of any person, company, organisation or thing.

"*Animal*" includes a bird, fish and reptile.

"*Authorised officer*" means:

- (a) a *person* appointed by the *Council* to be an authorised officer under section 224 of the *Act*; or
- (b) in respect to the enforcement of Part 3 of this Local Law, upon the *Council* publishing a notice in the Government Gazette under section 224A of the *Act*, any police officer.

"*bicycle*" has the same meaning as in the *Road Safety Road Rules 2009*.

"*Body of water*" includes a cascade, fountain, pond, pool and watercourse but does not include a *swimming pool*.

"*bBuilding*" includes a part of a building and the whole or any part of a structure, temporary building or structure, fence, gate, wall, *pavement light*, outbuilding, service installation, mast, pole and other appurtenance of a building.

"*bBuilding works*" includes works, activities, events and practices for or in connection with the construction, alteration, demolition or removal of a building.

"*cCentral Business Districtcity*" means the area depicted in the *Plan*.

"*child care centre*" means *premises* located on *Council land* used by a person to care for 4 or more children under the age of 13 years, in the absence of their parents or guardians, for the payment of a fee or other consideration.;

"*children's playground*" means *Council land* set aside or used for the predominant purpose of a children's play area.;

"*-Code*" means the Code of Good Practice for Construction Sites adopted by the former Docklands Authority on 22 March 2002, as amended from time to time by the *Council*.

"*cConstruction mManagement pPlan*" means a description of the proposed strategy to be implemented in relation to the *building works* to ensure:

- (a) public amenity and safety are maintained;
- (b) *Council* and community assets are protected;
- (c) *nuisances* are controlled and prevented;
- (d) compliance with the provisions of the *Council's Environment Local Law*;
- (e) disruptions to traffic are minimised;
- (f) *waste* is managed appropriately; and
- (g) appropriate environmental controls are in place.

"*Council*" means the Melbourne City Council.

"*Council land*" means land, buildings and facilities which are 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 an entry fee is paid or not.

"*cCrossing*" means a crossing for *vehicles* on or over a *road* for the purposes of enabling access to be gained to land next to a *road*.

"*dDesignated sound level*" is the maximum sound level *prescribed* by the *Council* for the purposes of any part of this Local Law.

For the avoidance of doubt the *Council* may:

- (a) set more than one *dDesignated sound level* based on factors including the location, the nature of the sound, the activity resulting in the sound; and
- (b) *prescribe* the method by which compliance with the *dDesignated sound level* is measured.

"*design and construction standards*" means the Design and Construction Standards for Public Infrastructure Works in the Docklands Area as amended from time to time by the Council.

"*Encroachment*" includes any object or thing projecting from a *building* on, over or in a *public place*.

"*Environment Local Law*" means the ~~Melbourne City Council's~~ Environment Local Law 2009 as amended from time to time.

"*gas regulator vent stack*" means any ventilation stack used to vent gas located in a *public place* as prescribed by the Council.

"*Goods*" includes food.

"*Green waste*" has the same meaning as in the *Environment Local Law*.

"*Handbill*" includes a placard, notice, book, pamphlet, paper and advertisement other than an advertisement affixed to any *building* abutting any *road* or public highway, but does not include a newspaper, magazine or book sold by a newsvendor or other *person* authorised by the Council nor any *handbill* containing material of an exclusively political nature distributed by hand to any *person*.

"*Hard waste*" has the same meaning as in the *Environment Local Law*.

"*Liquor*" means a beverage intended for human consumption with an alcoholic content ~~greater than~~ 0.5 per centum by volume ~~or greater at a temperature of 20 degrees Celsius~~.

"*Minor Building Work*" means *building work* valued at less than \$5,000.00 but excludes demolition and removal of buildings and structures (regardless of value).

"*moor*" means to hold, tether, berth or secure a *vessel* in a location by a cable, chain, anchor or other means.

"*Municipality*" means the municipality of the Council.

"*Notice to Comply*" means a notice given under clause 14.9~~13~~ of this Local Law.

"*Nuisance*" has its ordinary common meaning in this Local Law, except for Part 9, where it is also to include:

- (a) any *building works* that emit dust, odour, waste, noxious gases or other *wind blown refuse* beyond the construction site;
- (b) the leaving of open and unguarded pits, excavations or basements on a building site which may constitute a risk to public safety or property;
- (c) any temporary structure, material, condition or practice constituting a fire hazard or impairing the extinguishing of any fire;
- (d) any *building works* that exceed the *designated sound level* prescribed by the Council;
- (e) any vibrations exceeding the level *prescribed* by the Council.

"oOccupier" of premises means:

- (a) a person having the charge, management or control of the premises, and
- (b) in the case of premises that are let out in separate occupancies or a lodging house that is let out to lodgers, the person receiving the rent from the tenants or lodgers.

"oOwner" of premises means the following:

- (a) where the premises are Crown land, the owner of the premises is the lessee or licensee of the land from the Crown,
- (b) where the premises are other than Crown land, the owner of the premises is:
 - (i) every person who is jointly or severally entitled to the freehold estate of the land, and
 - (ii) every person who is, or would be, entitled to receive, or is in receipt of, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise.

"pPavement light" means a device incorporated into the footpath or roadway adjacent to premises for the provision of natural light to those areas of the premises below ground level.

"pPedestrian service signs" means signs for the benefit of pedestrians and includes-

- (a) identification signs indicating names of areas and precincts;
- (b) directional signs indicating direction to areas, attractions and features;
- (c) civic maps and maps of an area; and
- (d) historical signs, historical plaques, walls and information panels.

"pPermit" means a permit granted under Part 13 of this Local Law.

"pPerson" includes an individual, a corporation, an association incorporated under the *Associations Incorporation Act 1981*, a partnership and an unincorporated association.

"pPlace" when used as a verb includes allow to remain.

"Plan" means the plan appended to this Local Law.

"Planning Scheme" means an applicable planning scheme under the *Planning and Environment Act 1987*.

"pPremises" includes the whole or part of any land, a lot on a plan of subdivision and a building or building under construction.

"pPrescribe" and "pPrescribed" includes decided or specified by the Council.

"pProprietor" means the owner, occupier, lessee, licensee, manager or any other person in control or charge of any place or premises.

"*Public body*" means any government department or municipal council or body established for a public purpose by legislation.

"*Public place*" has the same meaning as in the *Summary Offences Act 1966* and, to the extent that it does not include the following, also includes:

- (a) any place *prescribed* by the *Council* as a public place, other than an interior part of a *building* which is not occupied by the *Council* or a *public body* unless that part has been *prescribed* by the *Council*;
- (b) any place to which the public whether upon or without payment for admittance have or are permitted to have access, but does not include a shopping centre;
- (c) any park, garden, reserve or other place of public recreation or resort;
- (d) any vacant land or vacant space adjoining any *road*;
- (e) any wharf, pier or jetty; and
- (f) a *Council building*.

"*Recyclable material*" has the same meaning as in the *Environment Local Law*.

"*Road*" has the same meaning as in the *Act* ~~and includes a pavement~~.

"*sailboard*" means a surfboard or other light weight device equipped with a sail designed to be propelled on water and includes a windsurfer.

"*segway*" means a two-wheeled, self-balancing electric form of transportation.

"*Sell*" includes:

- (a) barter, offer or attempt to sell, receive for sale, have in possession for sale, expose for sale, send, forward or deliver for sale, or allow to be sold or offered for sale; and
- (b) sell for re-sale.

"*ski*" includes a water ski, jet ski and surf ski.

"*smoke*" means to:

- (a) smoke, hold or otherwise have control over an ignited *tobacco product*; or
- (b) light a *tobacco product*.;

"*smoke free area*" means an area:

- (a) identified in Part A of Schedule 2 to this Local Law; or
- (b) *prescribed* to be a *smoke free area* in accordance with clause 3A.3.;

"~~sSpecial eEvent~~" means an organised sporting, recreational, cultural, commercial or social gathering of people which is held on a *road* or any other *public place* prescribed by ~~the Council~~.

"~~sSpruik~~" includes haranguing or addressing members of the public (whether directly or by the use of pre-recorded speech or messages) to encourage members of the public to enter ~~pPremises~~, purchase ~~gGoods~~ or both.

~~"Standards" means the Design and Construction Standards for Public Infrastructure Works in the Docklands Area as amended from time to time by the Council.~~

"~~sStreet art~~" means artwork in the form of a mural but excludes graffiti such as tagging or stand-alone stencils.

"~~sSwimming pPool~~" means a facility owned by, vested in or used or arranged by the *Council* for public bathing or swimming purposes, whether managed directly by the *Council* or by others and includes areas of land associated with that facility including all forms of exercise, recreational and associated areas within the enclosure which houses the swimming pool and associated facilities.

"~~tobacco product~~" has the same meaning as in the *Tobacco Act 1987*;

"~~tTou~~" includes soliciting business to ~~Ppremises~~ whether by addressing members of the public directly or the emission of music or other noise calculated to attract business to ~~pPremises~~.

"~~tToy vehicle~~" means equipment designed to be propelled *on land* by human power and includes a skateboard, scooter, roller skates and in-line skates *but does not include a bicycle*.

"~~traffic control item~~" means any sign, mark, structure or device displayed or erected for the purpose of controlling, directing, guiding, regulating or warning drivers or pedestrians, and includes a *traffic control signal*.

"~~traffic control signal~~" means a device, however operated, which uses words symbols or lights to control or regulate traffic.

"~~tTree~~" includes the trunk, branches, canopy and root system of the tree.

"~~vVehicle~~" means a conveyance which is designed to be or is propelled or drawn by any means, but does not include a train, tram, wheelbarrow, supermarket or shopping trolley, *bicycle*, *toy vehicle* or *wheel-chair*.

"~~vessel~~" *means a craft for travelling on water and* includes a boat, dinghy, yacht and catamaran *but does not include a sailboard or ski*.

"~~wWaste~~" has the same meaning as in the *Environment Protection Act 1970*.

"~~wWaste container~~" means a bin, cart or other receptacle of a kind approved by the *Council* for the purpose of *waste* collection within the *municipality* or part of the *municipality*.

"wheelchair" means a vehicle capable of a speed of no greater than 10 kilometres per hour propelled by human or mechanical power used for personal mobility by a person with a disability ~~capable of a speed of no greater than 7 kilometres per hour.~~

"wWind bBlown rRefuse" means refuse from a building site which is, if left outdoors, capable of or susceptible to being blown away without any human intervention by winds of a strength ordinarily encountered within the municipality in the course of a year.

- 1.12 Where a word or phrase has a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning.

PART 2

BEHAVIOUR

Introduction: This Part contains provisions which aim to protect the amenity of *public places* for all citizens by controlling behaviour in *public places* and by prohibiting persons from causing damage to *public places* or acting in a socially unacceptable manner.

Prohibited activities in *public places*

2.1 A person must not in, on or within the hearing or sight of a *public place*:

- (a) cause or commit any *nuisance*;
- (b) adversely affect the amenity of that *public place*;
- (c) interfere with the use or enjoyment of that *public place* or the personal comfort of another person in or on that *public place*;
- (d) annoy, molest or obstruct any other person in or on that *public place*;
- (e) defecate or urinate except in a toilet or urinal (as the case may be) in a public convenience; or
- (f) commit an indecent or offensive act; or
- (g) use any threatening, abusive or insulting words.

2.2 A person must not in or on a *public place*:

- (a) destroy, damage, alter, mark, deface or remove any property or thing;
- (b) walk on or over any plant bed, plant box or garden plot except with the consent of the *proprietor*;
- (c) cause risk of personal injury or damage to property by climbing or walking on or over, sitting on or sliding down any structure, *building*, fixture, free standing object, appliance or equipment (other than play equipment or recreation and fitness equipment installed by the *Council*) except with the consent of the *proprietor*;
- (d) after having been directed to leave by an *authorised officer*, enter or remain in any area, place, *building* or structure that is not open to the public; or
- (e) enter any area, place, *building* or structure in respect of which the *Council* has *prescribed* an entry fee, unless the entry fee has been paid to an *authorised officer* or authorised representative of the *Council* or the person enters in accordance with the written consent of the *Council* or the *proprietor*.

tToy vVehicles

2.3 A person must not:

- (a) use or allow to be used a *t*oy vehicle so as to endanger, intimidate or unduly obstruct or hinder any other *person* or *vehicle* lawfully using or intending to use the same area; or
- (b) ride a *t*oy vehicle in an area *prescribed* by the *Council* in accordance with Clause 2.4 or in breach of a *prescription* made by the *Council* under Clause 2.5.

2.4 The *Council* may *prescribe* a *public place* (other than a road or road related area) within the *municipality* for the purposes of this Clause 2.4 where it considers that the riding of *t*oy vehicles is reasonably likely to cause physical damage to infrastructure located within the area to be *prescribed*.

2.5 The *Council* may *prescribe* a *public place* (other than a road or road related area) within the *municipality* where the riding of a *t*oy vehicle is restricted at specified times and on specified conditions where it considers that the riding of *t*oy vehicles is reasonably likely to interfere with the use and enjoyment of the locality by pedestrians and other members of the public.

2.6 For the purposes of Clauses 2.4 and 2.5, the terms “road” and “road related area” have the meaning as in the *Road Safety Act 1986*.

Note: Maps showing the *prescribed* area or areas where the riding of a *t*oy vehicle is prohibited or restricted are available from the Front Desk, Melbourne Town Hall or by visiting [the Council's web site at www.melbourne.vic.gov.au](http://www.melbourne.vic.gov.au)

Animals

~~2.7 Whenever an *animal* is in or on a *public place*, the owner of the *animal* must have in his or her possession means for the effective collection and removal of any excrement that may be deposited by the *animal*.~~

~~2.8 The owner of an *animal* must immediately collect and remove all excrement deposited by the *animal* in a *public place*.~~

~~2.9 For the purposes of clauses 2.7 and 2.8 the owner of an *animal* includes the *person* who has the *animal* in his or her care for the time being whether the *animal* is restrained, confined or at large.~~

Protection of *t*rees

~~2.10~~ 2.7 Unless in accordance with a permit, a *person* must not in or on *Council Land* destroy, damage, remove or otherwise interfere with a *tree* or allow any *person* to destroy, damage, remove or otherwise interfere with a *tree*.

Camping in *p*ublic *p*laces

~~2.11~~ 2.8 Unless in accordance with a *permit*, a *person* must not camp in or on any *public place* in a *vehicle*, tent, caravan or any type of temporary or provisional form of accommodation.

Fencing *v*acant *l*and

~~2.12~~ 2.9 An *owner* or *occupier* of vacant land which is wholly or partially unfenced must, as soon as practicable after being directed to do so by the *Council* or an

~~a~~Authorised ~~o~~fficer, fence or cause to be fenced all or that portion of the vacant land which was the subject of the Council's or the ~~a~~Authorised ~~o~~fficer's direction.

Fences ~~a~~At ~~i~~ntersections

~~2.13~~2.10 The *owner* or *occupier* of any land situated at an intersection must not erect any fence on the land so as to obstruct the clear view:

- (a) by a driver, of any:
 - (i) Pedestrian;
 - (ii) ~~v~~Vehicle; or
 - ~~(b)~~(iii) traffic control item; or
- ~~(c)~~(b) by a pedestrian, of any:
 - (i) ~~v~~Vehicle; or
 - (ii) traffic control item.

~~2.14~~2.11 If an *owner* or *occupier* of land has erected a fence in breach or apparent breach of clause ~~2.9~~2 or ~~2.10~~13, a *Notice to Comply* may require the *owner* or *occupier* of the land to remove the fence or reconstruct the fence in the manner specified in the *Notice to Comply*.

PART 3

CONSUMPTION OF LIQUOR

Introduction: This Part aims to provide for the responsible management of *public places* so as to enhance the enjoyment of them by the general public, especially during major events. The provisions control the consumption of *liquor* in *public places* and other places within certain areas of the *municipality* and during certain periods of the year. Clause 1.7 identifies the areas and the periods during the year to which this Part applies.

Consumption and possession of *liquor* is prohibited in certain circumstances

3.1 A *person* must not:

- (a) in or at a *public place*; or
- (b) in or on a *vehicle* which is on or at a *public place*,

consume any *liquor* or have in his or her possession or control any *liquor* other than *liquor* in a sealed container in that part of the *municipality* prescribed by the Council pursuant to clause 1.7 of this Local Law.

Note: A map showing the *prescribed* area or areas where the consumption of *liquor* is prohibited throughout the year is available from the Front Desk, Melbourne Town Hall or by visiting the Council's web site at www.melbourne.vic.gov.au To find out details of the area or areas where the consumption of *liquor* may be restricted at other times of the year contact the Council or visit the Council's web site at www.melbourne.vic.gov.au

3.2 Clause 3.1 does not apply to a *person*:

- (a) taking part in a festival or event in respect of which the Council has granted a *permit* for *persons* to consume *liquor* or to have in their possession or control any *liquor* other than *liquor* in a sealed container; or
- (b) within authorised premises or licensed premises under the *Liquor Control Reform Act 1998* or any subsequent legislation relating to the serving and consumption of *liquor*.
- (c) who has been granted a *permit* to take *liquor* into an area prescribed by the Council pursuant to clause 1.7.

3.3 Where an *authorised officer* believes on reasonable grounds that a *person* is contravening or has contravened clause 3.1, the *authorised officer* may direct the *person* to seal any container or dispose of the contents of any unsealed container.

PART 3A

NO SMOKING IN SMOKE FREE AREAS

Introduction: This Part aims to provide for the responsible management of *public places* so as to enhance the enjoyment of them by the general public. The following clauses prohibit smoking *tobacco products* in *smoke free areas* within the *municipality*.

Prohibition on smoking

- 3A.1 A *person* must not *smoke* a *tobacco product* in a *smoke free area*.
- 3A.2 Where an *authorised officer* believes on reasonable grounds that a *person* is contravening or has contravened clause 3A.1, the *authorised officer* may direct the *person* to extinguish and then dispose of the *tobacco product*.

Council may prescribe smoke free areas

- 3A.3 In addition to the *smoke free areas* identified in Part A of Schedule 2 to this Local Law, **the Council** may *prescribe* any other area within the *municipality* to be a *smoke free area*.
- 3A.4 **The Council** must follow the guidelines incorporated in Part 2 of Schedule 2 to this Local Law when deciding whether to prescribe an area as a *smoke free area* under clause 3A.3.
- 3A.5 **The Council** or an *authorised officer* may erect, or cause to be erected, an *acceptable no smoking sign* in a *smoke free area*.

Note: maps showing *smoke free areas* are available from the Front Desk, Melbourne Town Hall or by visiting www.melbourne.vic.gov.au.

PART 3B

ANIMALS

Introduction: This Part aims to provide for the responsible care and management of *animals* within the *municipality* including regulating the number and types of *animals* a *person* may keep without a *permit*.

Application of Part 3B

3B.1 This Part does not apply to any land:

- (a) on which a pet shop is located;
- (b) on which an animal hospital or veterinary practice is located; or
- (c) if the use of the land for this purpose is permitted under the *Planning Scheme*.

Keeping of *animals*

3B.2 A *person* must not, without a *permit*, keep or allow to be kept any more of each species or group of *animal* than *prescribed* by the *Council*.

3B.3 Any structure used for housing an *animal* must be maintained:

- (a) in a clean, inoffensive and sanitary condition;
- (b) so as not to cause any *nuisance*; and
- (c) to the satisfaction of the *Council*.

animals* in a *public place

3B.4 A *person* must not feed or leave food for an *animal* in a *public place*.

3B.5 Whenever an *animal* is in or on a *public place*, the owner of the *animal* must have in his or her possession means for the effective collection and removal of any excrement that may be deposited by the *animal*.

3B.6 The owner of an *animal* must immediately collect and remove all excrement deposited by the *animal* in a *public place*.

3B.7 For the purposes of clauses 3B.5 and 3B.6:

- (a) the owner of an *animal* includes the *person* who has the *animal* in his or her care for the time being whether the *animal* is restrained, confined or at large; and
- (b) *animal* does not include a bird, fish or reptile.

PART 4

ADVERTISING AND USE OF SHOPFRONTS AND PUBLIC PLACES

Introduction: This Part contains provisions which aim to enhance the appearance of streets and *public places* by controlling the placement of *advertising signs* in *public places* and on and between *buildings* and *street art* in, or within view from, a *public place* within the *municipality* and the placement of *goods* and the like in *public places*.

Authorisation required for *advertising sign* or other thing on or between *buildings*

4.1 Unless:

- (a) in accordance with a *permit*; or
- (b) to do so is specifically authorised by and in accordance with legislation or the ~~Melbourne~~-*Planning Scheme* or a planning permit issued under it; or
- (c) no part of the *advertising sign* or other thing is in, on or over a *public place*,

a *person* must not hang, *place* or affix any *advertising sign* or other thing on or between any part of a *building*, plant, pole, post or other structure or allow that to occur.

Authorisation required for *street art* in, or within view from, a *public place*

4.2 Unless:

- (a) in accordance with a *permit*; or
- (b) to do so is specifically authorised by and in accordance with a planning permit issued under the ~~Melbourne~~-*Planning Scheme*,

a *person* must not apply ~~s~~*S*street art, or allow or suffer to allow, ~~S~~*s*street art on any part of an outside wall of a *building* such that the ~~s~~*S*street art is in, or within view from, a *public place*.

Note: Nothing in this clause is intended to affect the operation of the *Graffiti Prevention Act 2007*.

4.3 Where ~~s~~*S*street art is on a *building* in breach of clause 4.2, in addition to any other powers ~~the~~ *Council* has under this Local Law, the *Council* may serve a *Notice to Comply* on the *owner* or *occupier* of the *building* requiring the removal of the ~~s~~*S*street art.

4.4 If the person served with a notice under clause 4.3 fails to comply with the notice to the *Council's* satisfaction, the *Council* can take whatever action it considers is necessary to bring the *building* into compliance with the notice.

4.5 Any costs incurred by the *Council* in taking action under clause 4.4, unless otherwise agreed by the *Council*, must be paid by the person served with the notice under clause 4.4 and until such costs are paid with any interest payable, the costs will remain a charge on the *premises* on which the *building* is situated.

Authorisation required for portable *advertising signs* or other things in *public places*

4.6 Unless:

- (a) in accordance with a *permit*; or
- (b) to do so is specifically authorised by and in accordance with the **Melbourne** *Planning Scheme* or a planning permit issued under it,

a *person* must not *place* or erect a portable *advertising sign* or other thing in, on or over a *public place* or allow that to occur.

Authorisation required for *goods* in a *public place*

4.7 Subject to clause 4.8, a *person* must not hang, pile or place any *goods* or allow that to occur:

- (a) on the roof of or other portion of a verandah; or
- (b) on any shopfront or outside wall of *premises*.

4.8 Clause 4.7 does not apply if the placement of an item:

- (a) does not protrude over or into a *public place* or cause an obstruction or risk of injury to a *person* or damage to property; or
- (b) is specifically authorised by and in accordance with the **Melbourne-Planning** *Scheme* or a planning permit issued under it.

4.9 Unless in accordance with:

- (a) a *permit*, and
- (b) the consent of the *proprietor* of that place,

a *person* must not place or allow to be placed in a *public place* any planter or similar structure or thing.

PART 5

STREET TRADING AND SPECIAL EVENTS

Introduction: This Part contains provisions which aim to manage and facilitate responsible trading and entertainment on streets and *public places* to increase the attractiveness and comfort of these places, by controlling the soliciting of gifts and money, busking, *selling* and other behaviour on *public places*.

Permit required for the soliciting of money etc.

- 5.1 Unless in accordance with a *permit*, a *person* must not solicit or collect a gift of money or subscription or *sell* a raffle ticket in or on a *public place*.

Soliciting trade and similar activities

- 5.2 Unless in accordance with a *permit*, a *person* must not in a *public place* or from *premises* adjacent to a *public place*, offer to *sell goods* or solicit or try to attract trade or business or *tout* or *spruik* or allow any *person* to solicit or try to attract trade or business or *tout* or *spruik*.

Permit required for selling in a public place

- 5.3 Unless in accordance with a *permit*, a *person* must not *sell* any *good* or service on or in a *public place* or from *premises adjacent to a public place to a person in a public place*.

Permit required for handbills

- 5.4 Unless in accordance with a *permit*, a *person* must not display or distribute to any *person* any *handbill* in or on a *public place* or allow that to occur.

Permit required for filming and special events

- 5.5 Unless in accordance with a *permit*, a *person* must not in or on a *road* or any other *public place prescribed by the Council*:

- (a) conduct any *special event*.
- (b) conduct any filming where the film is for a commercial purpose, public exhibition or as part of a course conducted by a tertiary institution.

Note: The *Council* will take into account the *Filming Approval Act 2014* in considering an application for a *permit* under clause 5.5(b).

Permit required for busking

- 5.6 Unless in accordance with a *permit*, a *person* must not in or on a *public place*:
- (a) sound or play a musical instrument, sing, give a recitation or perform any conjuring, juggling, puppetry, mime or dance or other entertainment or do any of those things concurrently; or
 - (b) draw any message, picture or representation on a wall or pavement surface.

- 5.7 Unless in accordance with a *permit* or in accordance with clause 12.8, a *person* must not make any noise or allow it to be made by the use or operation of an amplifier or noise-making or enhancing device:
- (a) in a *public place*; or
 - (b) in *premises* adjacent to the *public place* if the noise is capable of being heard in the *public place*.
- 5.8 Clause 5.7(b) does not apply where the noise involved would not contravene clauses (a) and (b) of clause 12.8.

Causing obstruction

- 5.9 A *person* must not:
- (a) ~~invite, encourage or allow the congregation of persons so as to~~ without a *permit*, unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic in or on a *public place*; or
 - ~~5.9~~(b) invite, encourage or allow the congregation of *persons* so as to unreasonably obstruct or interfere with the passage of pedestrian or vehicular traffic in or on a *public place*.-

Furniture in a *pPublic pPlace*

- 5.10 Unless in accordance with a *permit*, a *person* must not place or cause to be placed any furniture in or on a *public place*.

PART 6

WORKS ON ROADS

Introduction: This Part contains provisions which aim to minimise the impact of works on roads on the amenity of the *municipality* and its residents by ensuring that obstructions do not interfere with the public's reasonable use of roads.

pPermit required for road interference

6.1 Unless in accordance with a *permit*, a *person* must not:

- (a) erect a hoarding or overhead protective awning on a *road*;
- (b) install a temporary or permanent *crossing*;
- (c) occupy or fence off part of a *road*;
- (d) use a mobile crane, travel tower, lift or tackle on or above a *road*;
- (e) make a hole in, excavate, damage or remove part of any *road*; or
- (f) install, alter or remove:
 - (i) a *pavement light*;
 - (ii) any object including a sign, tactile indicator or planter box on in or over a *road*;
 - (iii) a fence, gate or retaining wall on or in a *road*;
 - (iv) an *encroachment*.
- (g) enter or leave a site where *building works* are being conducted from a point other than a temporary or permanent ~~*vehicle-crossing*~~.

6.2 A *person* who breaches clause 6.1(e) shall be liable to repair, replace or reconstruct the *road* within 30 days of being requested to do so by an *authorised officer*.

PART 7

BUILDING STANDARDS

Compliance with Code

7.1 A *person* must comply with any obligation imposed by the *Code*.

Compliance with the *design and construction sStandards*

7.2 A *person* to whom the *design and construction sStandards* apply must comply with any obligation imposed by the *design and construction sStandards*.

Notification of the Office of Gas Safety

7.3 Prior to considering an application for a *permit* or licence for any structure, event or occupation of any area within 39 metres of a *gas regulator vent stack*, the applicant for the *permit* or licence must refer the application to the Office of Gas Safety, which may require the refusal of the *permit* or licence or inclusion of conditions in any *permit* or licence issued. Details of the application must also be notified to Gasnet, VicGas and TXU.

7.4 The *Council* will consider any requirement of the Office of Gas Safety before deciding whether to grant or refuse an application of the type described in clause 7.3.

PART 8

WATER ACTIVITIES

Prohibition on water activities

- 8.1 Unless in accordance with a *permit*, a *person* must not in or on a *public place*:
- (a) bathe, paddle, swim or wade in any *body of water* or allow an *animal* to do so, unless the *body of water* has been *prescribed* for that purpose; or
 - (b) deposit, throw or otherwise place anything on or into any *body of water*.

Mooring

- 8.2 A *person* must not, without a *permit*, *moor* any vessel on or along any *body of water*.

Behaviour

- 8.3 A *person* must not, while aboard a vessel on a *body of water*:
- (a) engage in any activity which is dangerous to any other *person*;
 - (b) use an amplifier or electronic device so as to interfere with the use or enjoyment of the *body of water* or any adjacent land by any other *person* except as permitted by the *Council* or an ~~a~~ *Authorised Officer*, or
 - (c) interfere with the reasonable use and enjoyment of a *body of water* or any adjacent land by any other *person*.

~~8.4~~ A *person* must not:

- ~~(a)~~ 8.4 take a *sailboard*, ~~windsurfer~~ or *ski* onto a *body of water* other than in an area ~~prescribed~~ by the *Council* -as being an area set aside for *sailboards* or *skis*.~~;~~~~or~~
- ~~(b)~~ ~~take a skiffleboard onto a body of water other than in an area prescribed by the Council as being an area set aside for skiffleboards.~~

PART 9

BUILDING WORKS (NUISANCE ABATEMENT)

Introduction: This Part contains provisions which aim to improve the amenity of the *municipality*, in particular residential areas, by preventing *nuisances* caused by *building works*.

Notice to be given before commencing *building works*

- 9.1 A *person* must not commence to carry out *building works* (other than *minor building works*) unless he or she gives at least 48 hours written notice to the *Council* of his or her intention to do so.
- 9.2 A notice under clause 9.1 must be in the form *prescribed* by the *Council* and if requested, include a ~~C~~construction ~~m~~Management- ~~P~~Plan which must be approved by the *Council* prior to commencement of *building works*.

Note: **The Council** requires a person to notify it prior to commencing any *building works* in order to ensure that all matters associated with the proposed *building works* are dealt with. This is to control and prevent potential damage to the environment and minimise any *nuisance* to those people in the vicinity of the *building works*.

- 9.3 A ~~c~~Construction ~~m~~Management ~~p~~Plan may be modified with the consent of the *Council*.
- 9.4 A *person* involved in the carrying out of *building works* must comply with a ~~c~~Construction ~~m~~Management ~~p~~Plan approved under clause 9.2 or modified under clause 9.3.

~~b~~Building works are confined to certain times and places

- 9.5 Except in the case of an emergency or in accordance with a *permit*, a *person* must not carry out *building works* or cause *building works* to be carried out unless the works are carried out between the hours of:
- (a) 7.00am and 7.00pm Monday to Friday; and
 - (b) 8.00am and 3.00pm on Saturday.

~~b~~Building works on a dwelling are confined to certain times and places

- 9.6 Notwithstanding clause 9.5, a *person* may carry out *building works* or cause *building works* to be carried out on a dwelling:
- (a) if the works are carried out on any day between the hours of:
 - (i) 7.00am and 7.00pm Mondays to Fridays;
 - (ii) 8.00am and 6.00pm on Saturdays;
 - (iii) 9.00am and 6.00pm on Sundays; and

- (b) the *person* is the *owner* or *occupier* carrying out the *building works* himself or herself and no other person is engaged for fee or reward; and
- (c) the *person* is complying or observing any direction, notice or order of the *Council*, *authorised officer* or any public authority.

9.7 Notwithstanding clause 9.6, a *person* may carry out *minor building work* on a dwelling at times other than those specified in clause 9.6(a) provided that the works do not exceed the *designated sound level prescribed* by **the Council**.

Wheels of *vehicles* to be kept clean

9.8 A *person* must not drive a *vehicle* on to any *road* from *premises* upon which any filling, excavation, landscaping, *building works* or demolition operation is being or has recently been carried out unless the wheels and undercarriage of the *vehicle* ~~are~~ clean.

***n*Nuisances**

9.9 A *person* must not carry out *building works* or cause *building works* to be carried out so as to create a *nuisance*.

Directions by *authorised officer*

9.10 An *authorised officer* may, either orally or in writing, direct any *person*:

- (a) found carrying out or suspected of carrying out *building works* in contravention of this Local Law or a *permit* granted under this Local Law; or
- (b) apparently in charge of *premises* where *building works* are being or are suspected of being carried out in contravention of this Local Law or a *permit* granted under this Local Law,

to cease carrying out those *building works* immediately or as soon as practicable.

PART 10

DILAPIDATED, DANGEROUS AND UNSIGHTLY PREMISES

Introduction: This Part contains provisions which aim to ensure that the appearance of *buildings* in the *municipality* are consistent with an image of the *municipality* that is safe, attractive and well maintained by controlling *premises* that have been allowed to reach a dilapidated, unsightly or dangerous condition.

Dilapidated premises

10.1 Where in the opinion of the *Council*, *premises* are in a dilapidated state, including where:

- (a) the exterior of any *building* is in a state of disrepair or has been damaged or defaced so as to affect the visual amenity of the property or the area in which it is located;
- (b) any architectural features of the *building* are not properly maintained; or
- (c) *pavement lights*, tactile indicators or other *encroachments* are in a state of disrepair which may be dangerous or likely to cause a danger to any *person*,

the *Council* may serve a *Notice to Comply* in accordance with clause 14.9~~13~~ of this Local Law specifying the work required to correct the dilapidated state.

Dangerous and unsightly premises

10.2 An *owner* or *occupier* of *premises* must ensure that all necessary steps are taken to prevent fires and minimise the possibility of the spread of fire by regularly minimising the build-up of grass, weeds, scrub, undergrowth and any other material or substance on or in the *premises* and ensuring that there is no storage of such material likely to assist in the spread of fire.

10.3 Where the *Council* is of the opinion that the condition of any *premises* may contribute to the spread of fire, the *Council* may serve a *Notice to Comply* in accordance with clause 14.9~~13~~ of this Local Law specifying the work required to correct the condition of the *premises*.

10.4 An *occupier* of *premises* must not cause or allow his or her *premises* –

- (a) to be kept in a manner which in the opinion of the *Council* is dangerous or likely to cause danger to health or property; or
- (b) to contain, in the opinion of the *Council*, noxious weeds, insects, excessive vegetation growth or be a haven for vermin.

10.5 Where the *Council* is of the opinion that the condition of any *premises* is as described in Clause 10.4 the *Council* may serve a *Notice to Comply* in accordance with clause 14.9~~13~~ of this Local Law specifying the work required to correct the condition of the *premises*.

10.6 An *occupier* of *premises* must not cause or allow his or her *premises* –to be kept in a condition which in the opinion of the *Council* –is unsightly or is detrimental to the general amenity of the neighbourhood.

10.7 Where the *Council* is of the opinion that the *premises* –

- (a) contains unconstrained rubbish; or
- (b) contains disused excavation or *waste* material;
- (c) for any other reason that may be determined by the *Council* from time to time is unsightly or detrimental to the general amenity of the neighbourhood,

the *Council* may serve a *Notice to Comply* in accordance with clause 14.9~~13~~ of this Local Law specifying the work required to correct the condition of the *premises*.

Compliance with a Notice

10.8 A *Notice to Comply* is to be served on the *occupier* of the *premises* or, if one of the following circumstances exist, on the *owner* of the *premises*:

- (a) the *occupier* of the *premises* cannot, after reasonable enquiry, be located; or
- (b) the *occupier* no longer occupies the *premises*; or
- (c) the *premises* are unoccupied.

10.9 In addition to any other means of enforcement provided by this Local Law, if the *person* served with a notice under clauses 10.1, 10.3, 10.5 and 10.7 fails to comply with the notice to the *Council's* satisfaction, the *Council* can take whatever action it considers is necessary to bring the *premises* into compliance with the notice.

10.10 Any costs incurred by the *Council* in taking action under clause 10.9 (including, without limitation, the cost of carrying out *building work*, the erection of hoardings and barricades and the removal of material from the *premises*), must be paid by the *person* served with the notice under clause 10.1, 10.3, 10.5 and 10.7 and until such costs are paid with any interest payable, the costs will remain a charge on the *premises*.

PART 11

NAMING OF ROADS AND NUMBERING OF PREMISES

Introduction: This Part contains provisions to provide for the making of clear signage of *road* names and street numbers to assist in the management of the *municipality* and assist emergency services.

Naming of *r*Roads

- 11.1 No person may give, approve or allot a name to any *road* without the approval of the *Council*.

Allocation of *n*Numbering

- 11.2 The *Council* may allot to *premises* within the *municipality* such numbers as it considers necessary to identify these *premises* and may from time to time make such changes as it deems fit.

Requirement to number *premises*

- 11.3 The *owner* of *premises* must clearly mark his or her *premises* with the numbers allotted by the *Council* and must renew the numbers as often as may be necessary.
- 11.4 Where the *Council* is unable to find or identify the *owner* of *premises*, the *occupier* of those *premises* must comply with clause 11.3.

Council may number *premises*

- 11.5 The *Council* may where *premises* are not marked by the *owner* or *occupier* with the number allotted, cause the *premises* to be numbered and recover the cost of doing so from the *owner* or *occupier* (as the case may be) as a debt due to the *Council*.

Interfering with numbers and street signs

- 11.6 A *person* must not:
- (a) destroy, pull down, obliterate or deface the name of any *road*, or the name or number of any *premises*; or
 - (b) paint, affix or set up any name to any *road*, or any name or number to any *premises*, contrary to the provisions of this Local Law.

Removal of unlawful sign or number

- 11.7 The *Council* may cause a *road* name or number unlawfully or incorrectly painted, affixed or set up to be removed, obliterated or destroyed.

PART 12

MISCELLANEOUS

Introduction: This Part contains provisions that aim to regulate and prohibit activities in *public places* not elsewhere covered by this Local Law to improve the amenity of the *municipality* and to protect other assets of the *Council* (such as *pedestrian service signs*).

Authorisation required for discharges

12.1 Unless:

- (a) in accordance with a *permit*, or
- (b) to do so is specifically authorised by and in accordance with legislation or approval issued under it,

a *person* must not allow any material including dust, wastewater, *waste*, mud, concrete, paint, oil or chemicals to be blown, conveyed, deposited or discharged in, on or across any *public place* (whether from a *building* in the course of construction, alteration, demolition or otherwise).

Prohibition on *vehicles* remaining in *public places*

12.2 Unless in accordance with a *permit*, a *person* must not:

(a) ~~bring a *vehicle* into or on or allow it to remain in or on a *public place* except;~~
or

(b) ride a *segway* or *bicycle* in or on a *public place*,

~~12.2~~ except:

~~(a)~~(c) where that *public place* is a road or road related area; or

~~(b)~~(d) in the case of a *bicycle*, where that *public place* is a pathway designated for use by *bicycles*.

12.3 In clause 12.2(~~ca~~), road and road related area have the meanings as defined in the *Road Safety Act 1986*.

Repairing ~~v~~ehicles

12.4 A *person* must not dismantle, paint, carry out maintenance or repair a *vehicle* on a road except where it is necessary to enable the *vehicle* to be removed or so that it can be driven away within one hour of a request by an *authorised officer*.

Interfering with a *pedestrian service sign*

12.5 A *person* must not:

- (a) destroy, remove, paint, obliterate or deface a *pedestrian service sign*; or
- (b) install or cause to be installed a *pedestrian service sign* without the approval of the *Council*.

Removal of unlawful signs

12.6 The *Council* may cause any unlawfully erected *pedestrian service sign* to be removed and disposed of.

General obstructions

12.7 A *person* must not allow any vegetation, *building* or thing to protrude from *premises* so as to obstruct or interfere with the passage of pedestrians or vehicular traffic in or on a *public place*.

Prohibition against causing excessive noise

12.8 Unless specifically authorised by and in accordance with legislation, a *person* must not in, on or over a *public place* or in *premises* adjacent to such a *public place* make or allow the making of a noise which:

(a) is capable of interfering with the reasonable comfort of any *person* who may be in the vicinity in that *public place*; or

(b) at a point:

(i) if the noise comes from *premises* adjacent to a *public place*:

(A) not less than 3 metres from but outside and adjacent to the frontage of the *premises*; or

(B) outside but near the rear boundary of the *premises*; or

(C) outside but near the side boundary or extension of the side boundary of the *premises*; or

(ii) if the noise comes from a *public place*, not less than 3 metres from the source of the noise,

exceeds the *designated sound level* when measured on sound level measuring equipment.

~~12.9~~ deleted

Deliveries to and collections of goods from premises

~~12.10~~ 12.9 Deliveries of any *goods* to or collections of any *goods* from any non-residential *premises* must only be made on such days and at such times as are prescribed by the *Council*.

wWaste

~~12.11~~ 12.10 wWaste including *hard waste*, *green waste* and *recyclable material* from any *premises* must only be collected on such days and at such times as are prescribed by the *Council*.

~~12.12~~ 12.11 A *person* must not collect *waste* or allow *waste* to be collected from an area prescribed by the *Council* between 11.01pm and 5.59am on the following day.

~~12.13~~12.12 A *person* must not, unless in accordance with a *permit*, collect waste or allow waste to be collected from:

- (a) an area *prescribed* by the Council between 6.00am and 11.00pm on the same day; or
- (b) any part of the ~~c~~Central city ~~Business District~~.

~~12.14~~12.13 A *permit* granted under clause 12.12~~3~~ may contain conditions requiring the holder of the *permit* to:

- (a) ensure that each *waste container* left out for collection is marked with a unique identification number and details of the frequency with which *waste* is intended to be collected from the *waste container*;
- (b) maintain a database of *waste containers*, showing the occupier of *premises* in respect of which each *waste container* was issued; and
- (c) ensure that the *permit* or a copy of the *permit* is at all times prominently displayed on each *vehicle* used in the collection of the *waste*.

~~12.15~~12.14 A *person* must not leave or allow to be left a *waste container* in or on a *public place* unless it is:

- (a) marked with the address of the *premises* in respect of which it was issued and a telephone contact number;
- (b) clean on all external surfaces including being free from visible food matter and other debris;
- (c) airtight, ~~and~~ securely closed and sealed; and
- (d) for the purpose of having *waste* collected and not before 6.00pm the evening before the collection day.

~~12.16~~12.15 Further to the requirement in clause 12.14~~5~~ a *person* must not leave or allow to be left a *waste container* in or on an area *prescribed* by the Council unless it is locked, provided that the Council takes into account the following matters before *prescribing* such an area:

- (a) pedestrian and vehicular traffic;
- (b) safety;
- (c) noise;
- (d) any other consideration it deems relevant.

~~12.17~~12.16 Between the hours of 7am and 7pm, once *waste* has been collected from a *waste container*, a *person* must not keep or allow that *waste container* to remain in or on a *public place* other than an area *prescribed* by the Council for the storage of *waste containers*, for more than 3 hours in the *central city* or other area *prescribed* by the Council and 24 hours in all other locations.

PART 13

PERMITS

When is a *permit* required under this Local Law?

- 13.1 Where in this Local Law a *person* is prohibited from doing a thing “unless in accordance with a *permit*”, a *person* who does the thing which is prohibited to be done without first obtaining a *permit* from the *Council* under this Part is guilty of an offence.
- 13.2 The *Council* may grant a *permit* subject to such conditions as it thinks fit.

Fee required

- 13.3 The fee payable for the granting of a *permit* is the fee that is *prescribed* by the *Council*.

Further information may be required

- 13.4 The *Council* may require an applicant to provide it with more information before it deals with the application for a *permit*.

Notice may be required

- 13.5 The *Council* may require the applicant to give notice of the application for a *permit* in the manner *prescribed* by the *Council*.

Duration of *pPermit*

- 13.6 Except where expressly stated in this Local Law or in a *permit*, a *permit* operates from the date it is issued and expires one year after the date of issue.

Correction of *pPermits*

- 13.7 The *Council* may correct a *permit* if that *permit* contains:
- (a) an unintentional error or an omission; or
 - (b) a material miscalculation or a material mistake in the description of a *person*, thing or property.
- 13.8 The *Council* must notify a *permit* holder in writing of any correction under clause 13.7.

Exemptions

- 13.9 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;
- 13.10 An exemption under clause 13.9 may be granted subject to conditions.
- 13.11 A *person* must comply with the conditions of an exemption under clause 13.9.
- 13.12 An exemption under clause 13.9 may be cancelled or corrected as if it were a permit.

Cancellation of a *P*permit

13.13 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*;
- (b) a *Notice to Comply* has been issued, but not complied with within seven days after the time specified in the *Notice to Comply*;
- (c) there was a significant error or misrepresentation in the application for the *permit*; or
- (d) in the circumstances, the *permit* should be cancelled.

13.14 Before it cancels a *permit* under clause 13.13, the *Council* must provide to the *permit* holder an opportunity to make comment on the proposed cancellation.

PART 14
ENFORCEMENT

Offences

14.1 A *person* who:

- (a) fails to comply with this Local Law; or
- (b) fails to comply with a condition of a *permit*; or
- (c) fails to do anything directed to be done under this Local Law; or
- (d) knowingly submits erroneous, inaccurate or misleading information in an application for a *permit*; or
- (e) refuses or fails to obey directions of an *authorised officer* to leave a *public place* where in the opinion of that *authorised officer* the person has failed to comply or is failing to comply with this Local Law; or
- (f) fails to comply with a sign erected by the *Council*,

is guilty of an offence.

Infringement notices

14.2 As an alternative to prosecution, an *authorised officer* may serve an infringement notice on a *person* who:

- (a) has done one or more of the things described in clause 14.1; or
- (b) is reasonably suspected of having done one or more of the things described in clause 14.1.

~~[clauses 14.3 – 14.6 deleted 12 July 2012]~~

~~14.7~~14.3 The fixed penalty in respect of an infringement notice is the amount set out in the Schedule to this Local Law. For offences not specified in Schedule 1 the penalty is 1 penalty unit.

Offences by Corporations

~~14.8~~14.4 If a *person* charged with an offence against this Local Law is a corporation, any *person* who is concerned or takes part in the management of that corporation may be charged with the same offence.

~~14.9~~14.5 If the corporation is convicted of an offence against this Local Law, a *person* charged under clause 14.48 with the same offence may also be convicted of the offence and is liable to the penalty for that offence unless that *person* proves that the act or omission constituting the offence took place without his or her knowledge or consent.

Court fines

~~14.10~~14.6 A *person* guilty of an offence against this Local Law is liable to a penalty:

- (a) not exceeding 20 penalty units; and
- (b) for a continuing offence, not exceeding 2 penalty units for each day after the conviction during which the contravention continues.

Costs incurred by the *Council* to be paid

~~14.11~~14.7 All costs incurred by the *Council* under this Local Law must be paid by the *owner* or *occupier* of the *premises* concerned and until such costs are paid with any interest payable, the costs remain a charge on the *premises*.

Notice to ~~C~~omply and directions

~~14.12~~14.8 An *authorised officer* may either orally or in writing direct a *person* to leave a *public place* if in the opinion of the *authorised officer* the *person* is failing to comply or has failed to comply with this Local Law.

~~14.13~~14.9 Either as an alternative or in addition to an infringement notice, an *authorised officer* may serve a *Notice to Comply* under this clause on a *person* who the *authorised officer* reasonably suspects to be in breach of this Local Law.

~~14.14~~14.10 A *Notice to Comply* under clause 14.913 must be in writing and in a form approved by the *Council*.

~~14.15~~14.11 A *Notice to Comply* under clause 14.913 may do one or more of the following things:

- (a) direct the *person* to comply with this~~e~~ Local Law;
- (b) direct the *person* to stop the conduct which constitutes the breach of this~~e~~ Local Law;
- (c) direct the *person* to deliver up to the *authorised officer* or to some specified person or some specified location any item or property of the *person* which constitutes the breach of this~~e~~ Local Law;
- (d) direct the *person* to remove or cause to be removed any item, *goods*, equipment or other thing that constitutes a breach of this~~e~~ Local Law;

- (e) direct the *person* to leave an area within the time specified in the notice that constitutes a breach of this Local Law.

~~14.16~~14.12 A *Notice to Comply* under clause 14.9~~13~~ must specify the time and date by which the *person* specified in the *Notice to Comply* must comply with the directions in clause 14.11~~5~~.

~~14.17~~14.13 The time required by a *Notice to Comply* under clause 14.9~~13~~ must be reasonable in the circumstances having regard to:

- (a) the amount of work involved; and
- (b) the degree of difficulty; and
- (c) the availability of necessary materials or other necessary items; and
- (d) climatic conditions; and
- (e) the degree of risk or potential risk; and
- (f) any other relevant factor.

~~14.18~~14.14 A *person* served with a *Notice to Comply* under clause 14.9~~13~~ must comply with a direction contained in the notice.

Power of *authorised officer* to act in urgent circumstances

~~14.19~~14.15 Any *authorised officer* may in urgent circumstances arising as a result of a failure to comply with this Local Law, take action to remove, remedy or rectify a situation without the necessity to serve a *Notice to Comply* provided:

- (a) he or she considered the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a *Notice to Comply*, may place a *person, animal, property* or thing at risk or in danger; and
- (b) details of the circumstances and remedying action are forwarded as soon as practicable to the *person* on whose behalf the action was taken.

~~14.20~~14.16 The action taken by an *authorised officer* under 14.15~~9~~ must not extend beyond what is necessary to cause the immediate abatement of or to minimise the risk or danger involved.

Power of *authorised officer* to confiscate

~~14.21~~14.17 Where a *person* owning or responsible for items, *goods, ~~and~~ equipment, vessel, bicycle or other property or thing* has ignored a direction from an *authorised officer* to remove them, the items, *goods, equipment, vessel, bicycle or other property or thing* may be confiscated and impounded.

~~14.22~~14.18 If an *authorised officer* has confiscated anything in accordance with this Local Law, the *Council* may refuse to release it until the appropriate fee or charge *prescribed by the Council* for its release has been paid to the *Council*.

~~14.23~~14.19 As soon as it is reasonably practicable to do so, the *authorised officer* must serve a written notice in a form that is prescribed by the *Council* from time to time on

the *owner* or person responsible for the confiscated item setting out the fees and charges payable and time by which the item must be retrieved.

| ~~14.24~~14.20 If after the time required in a notice a confiscated item is not retrieved, an *authorised officer* may take action to dispose of the confiscated 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 sub-clause (a);
- | (c) where the *owner* has advised the *Council* in writing that the *Council* may dispose of the *goods* because he or she does not intend to retrieve them, the *Council* may dispose of them by the method identified in sub-clauses (a) and (b).

PART 15

DELEGATIONS

- 15.1 The *Council* may by instrument of delegation delegate any of its powers, functions and duties under this Local Law to a member of its staff.
- 15.2 A reference in an instrument of delegation to a delegate by way of the delegate's position with the *Council* includes:
- (a) a *person* authorised to carry out the powers, duties and functions of that position at the *Council*;
 - (b) a *person* acting in that capacity; or
 - (c) if that position at the *Council* ceases to exist, any *person* exercising any power, duty or function which was previously a power, duty or function of the previous position.

ACTIVITIES LOCAL LAW

SCHEDULE 1

PENALTIES FIXED FOR INFRINGEMENTS

Clause	Offence	Penalty (Penalty Units)
2.1; 2.2	Prohibited activities in <i>public places</i>	2.5
2.3	Misuse of <i>toy vehicles</i>	1
2.7; 2.8	Animal waste disposal	2.5
2.7 10	Destroying or causing damage to <i>trees</i>	2.5 5
2.8 11	Camping in <i>public places</i>	2.5
2.9 12	Fencing vacant land	5
2.10 3	Fences at intersections	2
3.1; 3.3	Consumption / possession of <i>liquor</i> in prohibited area	1
3A.1	s Smoke in a <i>smoke free area</i>	1
3B.2	Keeping of <i>animals</i>	2.5
3B.3	Housing of <i>animals</i>	2.5
3B.4	Feeding of <i>animals</i> in a <i>public place</i>	1
3B.5; 3B.6	<i>animal waste disposal</i>	2.5
4.1	Unauthorised <i>advertising sign</i> or thing on or between <i>buildings</i>	5
4.2	Unauthorised display of <i>street art</i> in, or within view from, a <i>public place</i>	10
4.6	Unauthorised portable <i>advertising sign</i> or other <i>thing</i> in <i>public place</i>	2.5
4.7; 4.9	Unauthorised display of <i>goods</i> in a <i>public place</i>	5
5.1	Soliciting/collecting for money or subscription or <i>selling</i> a raffle ticket without a <i>permit</i>	2.5

5.2	Soliciting trade, or <i>touting</i> or <i>spruiking</i> without a <i>permit</i>	5
5.3	<i>s</i> Selling without a <i>permit</i> in a <i>public place</i>	5
5.4	Distribution/display of <i>handbills</i> without a <i>permit</i>	5
5.5	Filming or conducting a <i>special event</i> without a <i>permit</i>	5
5.6	Busking without a <i>permit</i>	5
5.7	Causing excessive noise	5
5.9	Causing pedestrian / vehicular obstruction	5
5.10	Placing furniture in a <i>public place</i> without a <i>permit</i>	10
6.1	<i>r</i> Road works undertaken without a <i>permit</i>	10
7.1	Failure to comply with the <i>Code</i>	20
7.2	Failure to comply with the <i>design and construction</i> <i>s</i> standards	20
7.3	Failure to refer application to the Office of Gas Safety	10
8.1	Water activities without a <i>permit</i>	2.5
8.2	<i>m</i> Mooring without a <i>permit</i>	10
8.3	Prohibited behaviour on a <i>vessel</i>	5
8.4	Prohibited activities on water	5
9.1	Failure to give 48 hours notice before commencing <i>b</i> Building works	10
9.4	Failure to comply with a <i>c</i> Construction <i>m</i> Management <i>p</i> Plan	20
9.5	<i>b</i> Building works out of hours without a <i>permit</i>	20
9.6	<i>b</i> Building works on a dwelling out of hours	5
9.7	<i>b</i> Building works carried out on a dwelling exceeding the <i>designated sound level</i>	10
9.8	Dirty wheels / undercarriage of construction vehicles	10
9.9	<i>b</i> Building works creating a <i>nuisance</i>	10

11.1	Unauthorised naming of <i>roads</i>	2.5
11.3; 11.4	Failure to clearly number <i>premises</i>	2.5
11.6	Interference with numbers or street signs	2.5
12.1	Unauthorised discharge of material in a <i>public place</i>	10
12.2	v Vehicle, -bicycle or segway without a <i>permit</i> in or on a <i>public place</i>	2.5
12.11	Collection of waste from premises	20
12.12	Collection of waste from prescribed area	20
12.13	Collection of waste from prescribed area or Central Business District	20
12.15	Leaving waste container in or on public place	10
12.16	requiring waste container be locked in prescribed areas	10
12.17	Leaving waste container for more than 24 hours	10
12.4	Repairing a <i>vehicle</i> on a <i>road</i>	5
12.5	Interfering with a <i>pedestrian service sign</i>	2.5
12.7	General obstructions from <i>premises</i> into a <i>public place</i>	2.5
12.8	Causing excessive noise	5
12.9 10	Delivery or collection of <i>goods</i> causing a <i>nuisance</i>	20
12.10	Collection of <i>waste</i> from <i>premises</i>	20
12.11	Collection of <i>waste</i> from <i>prescribed area</i>	20
12.12	Collection of <i>waste</i> from <i>prescribed area</i> or <i>central city</i>	20
12.14	Leaving <i>waste container</i> in or on <i>public place</i>	10
12.15	requiring <i>waste container</i> be locked in <i>prescribed areas</i>	10
12.16	Leaving <i>waste container</i> for more than the permitted time	10
2.114,14.9+ 3, 14.148	Failure to comply with a <i>Notice to Comply</i>	10

SCHEDULE 2

PART A – SMOKE FREE AREAS

The following areas are *smoke free areas* for the purposes of clause 3A of this Local Law:

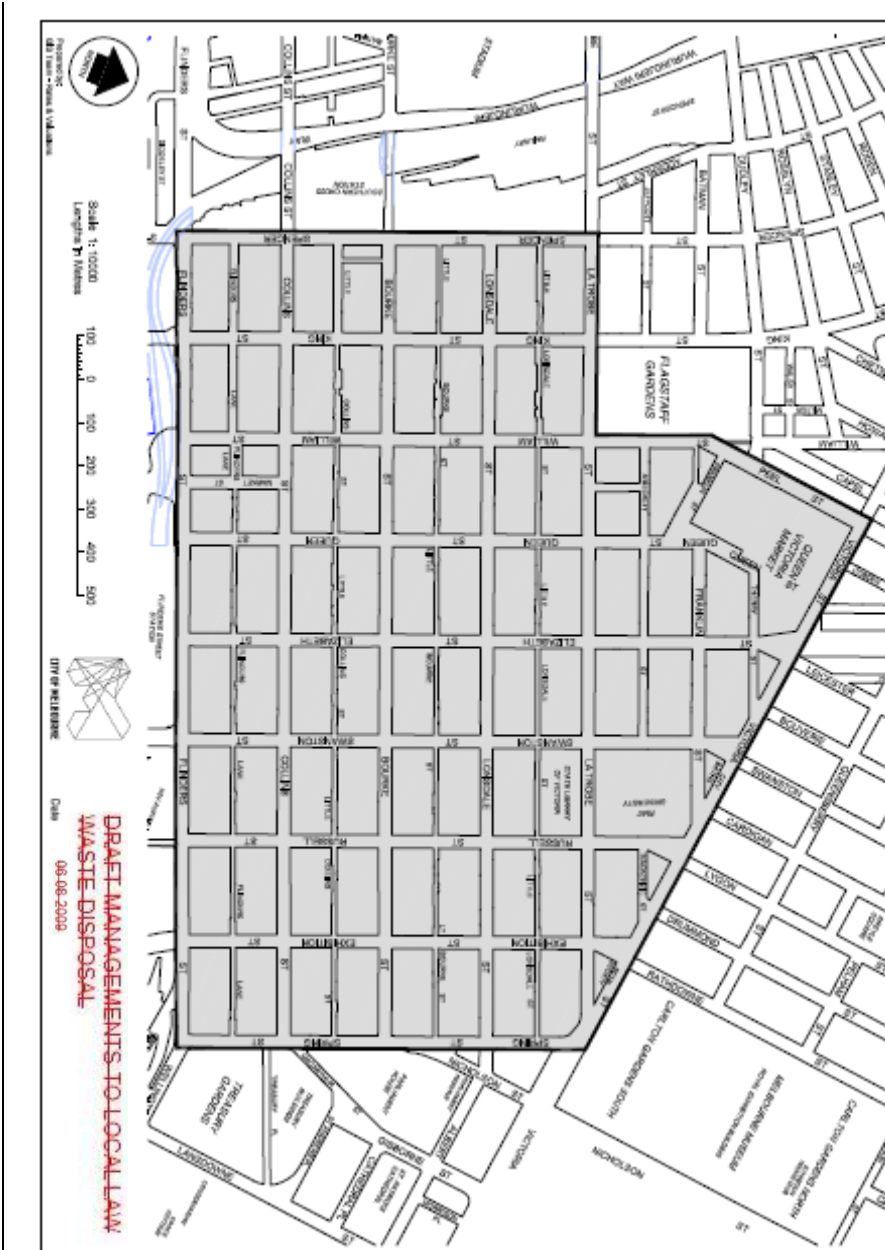
1. any *children's playground*, and any area abutting such *children's playground*, prescribed by [the Council](#); and
2. any parcel of land on which a *child care centre* is located, and any area abutting such parcel of land, prescribed by [the Council](#).

PART B – GUIDELINES FOR PRESCRIBING SMOKE FREE AREAS

When determining whether to *prescribe* a *smoke free area* for the purposes of clause 3A.3 of this Local Law, [the Council](#) must have regard to the following factors:

1. the size of the proposed *smoke free area*;
2. the opinions of any *Person* who is the *Owner* or *Occupier* of any part of the proposed *smoke free area* or the area immediately adjoining the proposed *smoke free area*;
3. the proximity of the proposed *smoke free area* to a *public place*, part or all of which is not in a *smoke free area*;
4. the extent and outcome of any public consultation on the proposed *smoke free area*;
5. any benefits to the community which would be achieved by [the Council](#) prescribing the proposed *smoke free area*; and
6. any detriments to the community which would be caused by [the Council](#) prescribing the proposed *smoke free area*.

ANNEXURE (PLAN)



This document is issued by the Melbourne City Council.

Kathy Alexander
Chief Executive Officer
and the Melbourne City Council's duly appointed delegate.

|

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22 June 2015

Mr Kim Wood
Chief Legal Counsel - Legal Services
Melbourne City Council
GPO Box 1603
Melbourne Vic 3001

Our ref: NAC
Matter no: 9547841

By email: kim.wood@melbourne.vic.gov.au

Dear Kim

Charter Assessment – Proposed Amended Activities Local Law 2009

I have reviewed the current consolidated proposed amended (marked up) copy of the Activities Local Law 2009 ("Amended Local Law") as provided to me by email on 11 June 2015.

You have requested that I provide you with advice as to whether the Amended Local Law would be compatible with the Charter of Human Rights and Responsibilities Act 2006 ("Charter"), if passed. You have requested that I review the entire Amended Local Law, not just the proposed amendments.

Rights that are Engaged or Potentially Engaged

I consider that various clauses of the Amended Local Law engage, or potentially engage, the following human rights recognised under the Charter:

1. Freedom of movement, expression, assembly and association
2. Freedom of thought, conscience, religion and belief
3. Property rights
4. Cultural rights, including recognition that human rights have a special importance for the Aboriginal people of Victoria
5. Protection of privacy and reputation

I also consider that the right to political communication is engaged, or potentially engaged, by the Amended Local Law.

Conclusion

I consider that the abovementioned rights are engaged in a way that any limit upon them within the Amended Local Law is a justifiable limit. I draw this conclusion based on a consideration of the wording of the Amended Local Law together with the probable application of it, including the enforcement contemplated in Part 14.

I conclude that the Amended Local Law would be compatible with the Charter, if passed in the proposed form. I note that compatibility of the Amended Local Law does not "complete the picture" in relation to the Charter rights, as Council authorised officers are bound to take proper

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consideration of the Charter rights into account when deciding to enforce the Amended Local Law. As such, it is necessary for Authorised Officers to receive appropriate training in relation to the application of the Charter Rights.

For completeness, I have also considered the operation of the implied rights in the Commonwealth Constitution (which largely overlap with the Charter rights; it being accepted that the Charter right to freedom of expression is broader than the implied freedom of political communication). I conclude that the Amended Local Law is reasonably appropriate and adapted to serve the identified legitimate ends. (I also conclude the making of the law, including the enforcement provisions, is not ultra vires the powers conferred on an authorised officer under the Local Government Act.)

In reaching the above conclusions, I have considered issues including:

1. So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights. As such, even though the Amended Local Law is compatible with the Charter rights in its terms, it is necessary on each occasion a Notice is issued for the Authorised Officer issuing a Notice under the Amended Local Law to consider the application of the Charter.
2. Charter rights are not absolute. There can be limitations or restrictions on certain rights. As to the types of any restriction or qualification to a human right or the manner in which a human right may be enjoyed, the Charter sets out when and how a restriction operates. For example, it sets definitional limits and internal limitations within the legislation. In addition, the operation of s.7(2) is such that it is recognised that a human right may be subject to such reasonable limits as can be demonstrably justified in a free and democratic society.
3. To the extent that a question is left open, following the decision of North J in *Muldoon & Ors v Melbourne City Council and Ors*, as to whether an enforcement provision can relevantly infringe a Constitutional right (about which North J concluded Council's argument that "any burden is to be found in the prohibition not in the mode of enforcement should be accepted"), I have considered whether the enforcement of Notices issued under various clauses of the Amended Local Law, in their operation or effect, impermissibly infringe the implied constitutional right to communicate about government or political matters. I have not been able to consider how the Notices might relevantly infringe based on their terms as the form of the notice is not contained in the Amended Local Law, so it remains possible that the way in which a Notice is drafted, in its terms, may possibly impermissibly infringe the implied Constitutional rights.
4. What are the legitimate ends of the prohibitions contained in the Amended Local Law? Are those ends compatible with the rights identified above and the maintenance of the constitutionally prescribed system of representative and responsible government?
5. Are the prohibitions contained within the Amended Local Law, including permit systems, reasonably appropriate and adapted to serve the identified legitimate ends in a manner which is compatible with the rights identified above and the maintenance of the constitutionally prescribed system of representative and responsible government?
6. Whether there are any appropriate, reasonably available less restrictive means to achieve the purpose of the Amended Local Law.

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Melbourne City Council

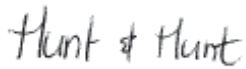
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lawyers

As indicated above, having taken all of the above into consideration, I conclude that the Amended Local Law would be compatible with the Charter (and does not infringe the Constitution), if passed in the proposed form.

Please let me know if you wish for me to prepare a summary of which local laws in the Amended Local Law engage, or potentially engage, which right, and how that right is justifiably limited.

Please communicate with Nieva Connell if you have any questions in relation to this matter.

Yours faithfully
Hunt & Hunt



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Partner

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