

Community Impact Statement (LLCIS) Community Amenity Local Law 2023



1. Introduction

Council is proposing to make a new Local Law (Community Amenity Local Law 2023) to replace the existing Local Law No.1 (Community Amenity) adopted in 2013 (the current Local Law).

The proposed new Local Law (proposed Local Law) will supersede and replace the current Local Law.

The proposed Local Law, to be known as the City of Port Phillip Community Amenity Local Law 2023 will commence on the day following notice of its making being published in the Victoria Government Gazette and, unless it is revoked earlier, and will expire 10 years after commencement.

This Community Impact Statement has been prepared to inform the community about the proposed Local Law and to assist any member of the public who may wish to make a submission to Council during the public consultation process required under the *Local Government Act 2020*.

2. Background

Local Laws are a form of local regulation that enable councils to make legislative controls that reflect the different circumstances of each municipality. Victorian Councils have the broad power to make local laws under Section 71(1) of the *Local Government Act 2020*.

Local laws automatically 'sunset' (are revoked) ten years after their making, unless revoked sooner. The current local law sunsets on 31 August 2023. On commencement of the proposed local law, the current local law will be revoked. The proposed local law will operate throughout Council's municipal district. There is an associated Procedures and Protocols Manual.

The current Local Law regulates various activities and behaviour throughout the municipality and has been updated to reflect changes in legislation and current issues within the municipality.

To date, extensive internal consultation has been undertaken including benchmarking, review of customer complaints and current challenges; assessment of enforcement actions, staff workshops, Councillor workshops and discussions with Victoria Police regarding some specific Local Laws that they enforce.

The statutory consultation period will run from 6 March until 31 March 2023.

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

A copy of the proposed Local Law is provided with this Community Impact Statement.

3. Overview and Intent

On 6 April 2022 Council adopted a set of draft Principles and Desired Outcomes for its proposed local law. These have been used to guide development of the proposed local law and test proposed changes. The Principles will form part of the local law itself. As such, they are subject to community consultation.

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Principles

The Local Law:

- a) Supports and enables delivery of Council's core strategies and policies and where there may be conflict, that outcomes are balanced across strategies;
- b) Is practical and safe to implement and enforce;
- c) Reflects the value our community places on liveability and amenity;
- d) Responds to known and foreseen amenity issues (that are not covered under other legislation);
- e) Recognises the value of a partnered approach to managing the City's amenity;
- f) Supports Council's role as a regulator and enforcement agency by ensuring the Local Laws are:
 - necessary
 - proportionate
 - consistent (in language and effect)
 - compliant (with the legislation under which they are made and other legislative requirements)
 - enforceable
 - accessible
 - efficient
 - accountable
 - transparent
 - current
 - do not replicate other provisions.

Outcomes

Council has adopted the following desired outcomes for the Local Law. These, together with the principles, will form part of the new Local Law and are subject to community consultation.

A Local Law that:

- Supports the creation of a liveable, safer and healthier city by regulating activities that occur in public and private places that may impact on urban character, local amenity and the fair enjoyment by or safety of others;
- Enhances individual rights and liberties and contributes to social inclusion, community connectedness and wellbeing;
- Contributes and enhances to the vibrancy and activation of our city;
- Protects Council assets and property given the significant investment made by ratepayers;
- Educates our community on what is permissible, what is not and how breaches will be enforced by Council;

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- Ensures Council meets its city governance requirements and the community has confidence that Council is administering its powers and functions appropriately.

The Local Law plays an important role in enabling Council to deliver on its strategic objectives, core strategies and policies. For example, but not limited to, those listed below.

Council Policy / Strategy	Local Law Considerations
Health & Wellbeing Strategy	<i>Behaviour on Council Land, Consumption of Liquor, Camping on Council Land, Commercial Waste and Noise, Use of Council Reserves, Outdoor Permits, Managing Building Site Amenity.</i>
The Art and Soul Strategy	<i>Event Permits, Busking, Filming, Behaviour on Council Land.</i>
Outdoor Events Policy	<i>Event Permits, Fireworks. Market Sites.</i>
Sports & Recreation Policy	<i>Ballooning, Skydiving, Outdoor Gyms and Personal Trainers.</i>
Homelessness Action Strategy	<i>Camping on Council Land, Behaviour on Council Land.</i>
Protocol For Assisting People Who Sleep Rough	<i>Camping on Council Land, Behaviour on Council Land.</i>
Greening Port Phillip	<i>Significant Trees</i>
Asset Management Policy	<i>Asset Protection Permits, Setting Bonds, Repairing Damage.</i>
Move, Connect, Live Strategy	<i>Event Permits, Permits for Heavy Vehicles, e-bikes/scooters,</i>
Waste Strategy	<i>Commercial waste collection, bins.</i>

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4. Main Changes to the Local Law

All provisions of the current Local Law have been reviewed. The proposed Local Law 2023 proposes the following:

- amendments to existing definitions
- insertion of new definitions
- amendments to existing clauses;
- insertion of new clauses;
- penalty amounts aligned under the Local Government Act 2020; and
- 'administration only' changes

Substantive changes are outlined below.

Changes to existing clauses

- Clause 9 Connecting to Council Drains has been altered to ensure that any connection to a Council drain is carried out pursuant to a permit. This alteration has been made to increase control over activities that have the potential to damage Council assets, and/or impact the quality of water entering stormwater systems, water courses and Port Phillip Bay. The current requirement to obtain a permit did not apply where Council has approved a plan of subdivision. This exemption has been removed to ensure that all connections to a Council drain are carried out in accordance with Council's requirements.
- Clause 15 Asset Protection Permit has been amended to make it clear that the owner of the land can be held responsible for damages caused by the builder if the builder fails to repair the damage. The wording of the clause has been simplified, and definition of builder expanded to ensure that all parties involved in building works can be held responsible for damage to Council assets. This change is consistent with Building and Planning legislation.
- Clause 23 Shopping Trolleys has been amended to require all venues with over 30 trolleys to have a perimeter lock system installed to reduce the number of trolleys being taken off site. This amendment is aimed at preventing shopping trolleys from being moved well beyond the stores, misused or being abandoned on public land where they can cause damage and block access.
- Clause 31 Residential Parking has been amended to align with Council's new Parking Management Policy. The revised clause also makes it an offence to sell or purchase, hire, lease, licence or receive a residential parking permit that has been allocated to another person. The clause makes it an offence to copy, reproduce, tamper with, lend or sell a residential parking permit. This change is in response to increasing rates of misuse and forgery.
- Clause 33 Itinerant Trading has been amended to include all Council Land. This will allow Council to require and assess permits for any businesses seeking to use Council Land for commercial purposes, including e-bikes and e-scooters.
- Clause 35 Special Events has been amended to include the requirement for a permit for the placement of any furniture, heater, fire pit or other item on a road or Council Land. This enables event organisers to broaden their offer at some special events.

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whilst managing risks and being subjected to assessment through the permitting process.

- Clause 51 Dangerous or Unsightly Land. This clause has been expanded. A new Part (1) sub clause (2) has been introduced to require owners or owners' corporations to take responsibility for land adjacent to their properties and not allow nature strips and land adjacent to property to be unsightly or occupied with furniture or other objects. This amendment is proposed to encourage a joint onus approach to addressing the issue of dumped hard waste in our streets and responds to community complaints and feedback about the amenity, access and visual impacts of this occurrence. Land owners and owners' corporations will be required to book hard waste collections services through Council's service provider.
- Clause 52 Managing Amenity on Building Sites has also been amended to include the requirement for Tree Protection Barriers for Council trees (including root zone) on the nature strip or other Council Land adjoining a building site. This change is in recognition of the trees' environmental and aesthetic values, and the significant investment of public funds in tree maintenance, monitoring and replacement.
- Clause 52 Managing Amenity on Building Sites has been amended to increase the allowable hours whereby construction works can be carried out on a Saturday without requiring an 'Out of Hours' permit. The allowable hours will increase from 9am to 3pm to 9am to 5pm. This is in response to increasing requests for permits from the construction industry and in consideration of the municipality's increasing level of development and projected growth. Permit issuance beyond these hours will be carefully managed to protect community amenity. Benchmarking indicates that allowable start times in neighbouring Councils is 9am, but there is a variety of Saturday end times, ranging from 3pm in Bayside and 6pm in Glen Eira to 8pm in Stonnington.

New clauses/definitions

- Clause 20 Commercial Dog Walkers. This clause was adopted in principle by Council when it adopted the Domestic Animal Management Plan 2021, following community consultation. It seeks to ensure the safety of people and other animals, and amenity of parks and their neighbours by imposing an obligation upon commercial dog walking businesses to obtain a permit if walking, exercising, or otherwise being in control of 7 dogs or more on Council Land.
- Clause 43 Furniture and other items on Council Land and Footpaths. This new clause makes it an offence to place furniture or other items on footpaths or other Council Land that obstructs access and provides a power for Authorised Officers to direct that they be removed, or impound the items, if there is a breach. The clause is aimed at reducing the incidence of dumped furniture and other items being moved from their original positions to open spaces and footpaths within the municipality, where they impact pedestrian and customer access to businesses, public amenities and footpaths. It is similar to a clause in the City of Melbourne's Local Law.
- Clause 50 Political Signs: This new clause is proposed in order to improve transparency and remove any confusion with regard to the Planning Scheme and other legislation. The clause makes it an offence to affix, erect, install or otherwise display a political sign on Council Land other than where it is authorised under any other legislation. State and Federal legislation provide for the placing, erection and display of candidate signs within 100m of polling places.

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5. Evaluation of the proposed Local Law

The substance of the existing local law has been kept and the language and structure have been simplified. A number of definitions have been clarified or amended to align with State legislation or for simplicity. In addition, the proposed local law creates some new offences. An evaluation of the proposed local law is outlined in the following table.

Issue	Evaluation
Measures of success of the proposed local law	<p>The overall success of the proposed local law will be best measured by the extent to which it achieves the desired outcomes and leads to:</p> <ol style="list-style-type: none"> 1. An improvement in Council's service ratings relating to liveability and community amenity; 2. A reduction in the number of complaints about amenity being received annually; 3. A reduction in the number of local law breaches detected annually; 4. A reduction in the amount of furniture and other household items collected on patrols. 5. A reduction in the number of complaints about the safety and amenity impacts of commercial dog walkers. 6. A reduction in the number of abandoned shopping trolleys found in streets, parks and the foreshore. 7. An increase in the number of permits for use of public spaces for events, activations, footpath trading, commercial activities that support the strategic directions of Council.
Existing legislation which might be used instead	In preparing the proposed local law, care was taken to ensure that no clauses are included that relate to matters addressed under existing State or Federal legislation.
Overlap with existing legislation	It is believed that the proposed local law supplements State legislation without duplicating, overlapping or creating any inconsistencies.
Overlap with Planning Scheme	The proposed Local Law does not overlap with the Port Phillip Planning Scheme.
Risk assessment	<p>Council does not believe there are any significant risks associated with the proposed local law.</p> <p>In reaching this view, Council considered the absence of such a local law and the lack of controls Council would have over its assets and the environment, as a consequence.</p>

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Issue	Evaluation
Legislative approach adopted	<p>The proposed Local Law seeks to place the minimum imposition on the community whilst managing known risks. This is evidenced by:</p> <ul style="list-style-type: none"> Reasonable penalties (infringement penalties align with State legislation); Minimum possible new offences created. <p>Council has, where appropriate and possible, adopted a performance based approach to the proposed local law, which focuses on the outcomes sought rather than the methodology to be applied.</p> <p>All provisions of the proposed Local Law are open to public scrutiny and comment.</p>
Permits	<p>The proposed local law makes provision for the issue of permits. The proposed local law requires permits to be obtained for various activities. For some permits, such as Footpath Trading, Parklets and Events, Council sets specific conditions and may apply fees.</p>
Fees	<p>The proposed local law provides for Council to determine fees and charges that will apply at any time.</p> <p>These fees and charges are set through the Council's Council Plan and Budget processes and are subject to separate community consultation.</p> <p>In some instances, the methodology for fee calculation will be outlined in a Guideline document (e.g. the Footpath Trading Guidelines).</p>
Penalties	<p>All offences created under the proposed Local Law attract varying maximum penalties, ranging from 2 penalty units to 20 penalty units with varying infringement penalties prescribed in Schedule 1 to the proposed Local Law as being approximately one quarter of the maximum penalty for an offence.</p> <p>Council has compared the general level of penalties provided for in the proposed Local Law with the Local Laws of other like and neighbouring councils.</p> <p>Council is satisfied that penalties are similar in nature and amount to like and neighbouring councils and are sufficient to act as a deterrent for most offences while also reflecting the seriousness of those offences.</p>
Restriction of competition	<p>The proposed local law has been reviewed against National Competition Policy principles and is considered to be consistent with these.</p>

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Issue	Evaluation
Charter of Human Rights	<p>The <i>Charter of Human Rights and Responsibilities Act 2006</i> contains twenty basic rights that promote and protect the values of freedom, respect, equality and dignity.</p> <p>The implications of the proposed local law have been assessed by Council's external legal adviser as compatible with the requirements of the Charter.</p> <p>To the extent that any provisions engage human rights, the limitations imposed are demonstrably justifiable, such that no incompatibility arises.</p>
Comparisons with other Councils	<p>In drafting the proposed Local Law, Council examined Local Laws from a number of like and neighbouring councils to assess similarities and differences and ensure a reasonable degree of consistency in content, approach and penalties.</p>
Consultation	<p>The proposed Local Law has been reviewed in consultation with Councillors, members of Council staff, Council's legal advisers and Victoria Police (in relation to clauses they enforce).</p> <p>Public community consultation will be undertaken as part of the process of making the proposed local law and anyone interested in making a submission may do so, in accordance with section 73 of the <i>Local Government Act 2020</i>.</p>