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Special Council Meeting

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**SPECIAL MEETING OF COUNCIL
8 NOVEMBER 2011**

AGENDA

1. **DECLARATION OF OPENING**
Mayor
2. **DISCLAIMER**
The Chairperson to read the City's Disclaimer
3. **ANNOUNCEMENTS FROM THE PRESIDING MEMBER**
 - 3.1 **Audio Recording of Council meeting**
4. **ATTENDANCE**
 - 4.1 **Apologies**
 - 4.2 **Approved Leave of Absence**
5. **DECLARATION OF INTEREST**
Conflicts of Interest are dealt with in the Local Government Act, Rules of Conduct Regulations and the Administration Regulations as well as the City's Code of Conduct 2008. Members must declare to the Chairperson any potential conflict of interest they have in a matter on the Council Agenda.
6. **PUBLIC QUESTION TIME** *(in relation to Item 8)*
7. **DEPUTATIONS** *(in relation to Item 8)*
8. **REPORT**

8.1	Minor Amendment to the Dog Local Law 2011
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Location:	City of South Perth
Applicant:	Council
File Ref:	GO/106
Date:	20 October 2011
Author:	Phil McQue, Manager Governance and Administration
Reporting Officer:	Cliff Frewing, Chief Executive Officer

Summary

The report considers advice received from the Parliamentary Joint Standing Committee on Delegated Legislation requesting the Council to make a minor amendment to the Dog Local Law 2011 via the removal of the wording '*other than an alfresco area*' from clause 4.1(1). The proposed amendment will not affect the operation of the Dog Local Law 2011 and is therefore supported by the City.

Background

Following extensive community consultation, the Council at the 28 June 2011 meeting resolved to make the Dog Local Law 2011. The Dog Local Law was subsequently published in the Government Gazette on 21 July 2011.

The statutory local law process required the City to advise the Western Australian Parliamentary Joint Standing Committee on Delegated Legislation (JSC) of the Dog Local Law 2011 in a prescribed manner following gazettal. The JSC's role is to oversee the making of delegated legislation such as regulations and local laws, including investigating whether the item under consideration is authorised or contemplated by the empowering enactment.

The JSC has now examined the City's Dogs Local Law 2011 and formed the view that sub clause 4.1(1)(c) is not authorised or contemplated by s3.7 of the *Local Government Act 1995*, which provides that a local law shall be inoperative to the extent that it is inconsistent with the Act or any other written law. A copy of the JSC advice is shown at **Attachment 8.1**.

Cub clause 4.1(1)(c) provides that:

4.1 Places where dogs are prohibited absolutely

(1) Subject to section 8 of the Act and section 66J of the *Equal Opportunity Act 1984*, dogs are prohibited absolutely from entering or being in any of the following places—

- (c) food business premises (other than an alfresco area) or a food transport vehicle for the purposes of the *Food Act 2008*'

The JSC has advised the City that in its view:

- Section 22 of the *Food Act 2008* requires food businesses to comply with any provision imposed by the *Australia New Zealand Food Standards Code* (Chapter 3 of which has been incorporated into the Act). Part of this Standard provides that a food business must '*permit an assistance animal only in dining and drinking areas and other areas used by customers*'. This includes alfresco areas.
- This requirement to ban all animals (other than assistance animals) from food premises is however mitigated by the Minister for Health's policy decision to limit enforcement of the ban to certain situations only and as outlined in the Department of Health's 'Regulatory Guideline No. 2' and 'Fact Sheet No. 5', local governments must take a 'risk based approach' to enforcement and only actively enforce the ban where there is evidence of a present risk of unsafe or unsuitable food being sold.
- Section 120 of the *Food Act 2008* gives the CEO of the Department of Health the authority to require local governments to adopt a guideline when performing their functions under the Act. While local governments must comply with the guideline, they cannot make legislation that is contrary to the actual provisions of the *Food Act 2008*.
- By specifying in clause 4.1(1)(c) of the Dogs Local Law that dogs are permitted in alfresco areas, the City has attempted to enshrine in legislation a policy guideline from the Department of Health, which may change from time to time.

The JSC's legislative arrangements require that it cannot recommend to Parliament that a local law be amended which contains provisions that conflict with existing legislation and as a consequence it must move to disallow the Local Law in its entirety. In addition, the timeframes around which its recommendations must be made are such that there is very little time in which to make changes before this disallowance recommendation is to be considered by Parliament.

The Committee moved a Notice of Motion in the Legislative Council of Parliament on 27 September 2011 to preserve its power under section 42 of the *Interpretation Act 1984* to recommend to the Parliament that the *City of South Perth Dog Local Law 2011* be disallowed (effectively 'repealed') unless the City provides an undertaking that:

- the words '*other than an alfresco area*' be deleted from clause 4.1(1)(c);
- all consequential undertakings arising from this undertaking will be made;
- Clause 4.1(1) will not be enforced in a manner contrary to this undertaking;
- the undertaking will be completed within 6 months of the date of this letter;
- the City is to provide the JSC with a copy of the minutes of the meeting at which Council resolves to provide the undertaking; and
- where the Local Law is made publicly available, whether in hard copy or electronic form, it will be accompanied by a copy of these undertakings.

The Committee regularly Notices of Motion in this manner while it is negotiating or corresponding with a local government, but if its concerns are adequately addressed, the Committee will withdraw the relevant Notice of Motion from the Parliament's order of business at the next sitting day. The effect of this is that the local law will continue to be in effect.

If these undertakings are provided by Council by 16 November 2011, the JSC has advised the City that it will withdraw its motion to disallow the local law. If the Council decides not to amend the Dog Local Law 2011, then the Joint Standing Committee will recommend disallowance of the Local Law to the Parliament.

Comment

The original Dog Local Law proposed by the City did not provide for dogs to be permitted in alfresco areas. This addition to clause 4.1(1)(c) was inserted at the 2011 June Council meeting when considering the final version of the local law in response to community concerns about dogs not being permitted in alfresco dining areas.

Deletion of the words '*other than an alfresco area*' from that clause will have no practical effect, providing the Health Department of Western Australia does not change its guidelines with respect to 'actively enforce the ban (only) where there is evidence of a present risk of unsafe or unsuitable food being sold'.

Even if the Council did not amend the local law, the City would still have to comply with any such change anyway as the provisions of sub clause 4.1(1)(c) would be inoperable to the extent that it contravenes a written law.

In order to alleviate any public concerns, the City could consider inserting a text box to the administrative version of the Dogs Local Law 2011 and those that are made available to the public to the effect that the amended provision of clause 4.1(1)(c) does not prevent dogs from being in alfresco dining areas and referring to the Health Department Guideline. Text boxes have been used in many other areas in a similar fashion and while they do not form part of the official version of the Local Law, act to provide clarity to many provisions.

Consultation

Section 3.12(3) of the *Local Government Act 1995* requires the local government to give State-wide and local public notice stating that it proposes to make a local law, the purpose and effect of which is summarised in the notice for a period of 6 weeks after it first appears.

Policy and Legislative Implications

Section 3.12 of the *Local Government Act 1995* and Regulation 3 of the *Local Government (Functions & General) Regulations 1996* set out the procedural requirements to amend a local law, which are the same as that required for the making of a local law.

The Act requires the person presiding at a Council meeting to give notice of the purpose and effect of the proposed local law by ensuring that the purpose and effect is included in the Agenda for the meeting, and that the Minutes of the meeting include the purpose and effect of the proposed local law.

The purpose and effect of the proposed *City of South Perth Dog Amendment Local Law* is:

Purpose:

To amend the *City of South Perth Dog Local Law 2011* by deletion of a provision in clause 4.1(1(c)) contravening the *Food Act 2008*.

Effect:

That part of the local law is no longer operable.

The proposed local law is attached.

Financial Implications

The proposed new local law will require advertising for public submissions, as well as publishing in the Government Gazette if eventually adopted.

Strategic Implications

The proposal is consistent with Strategic Goal 6: Governance “*Ensure that the City’s governance enables it to respond to the community’s vision and deliver its service promises in a sustainable manner.*”

Sustainability Implications

This report is aligned to the City’s sustainability strategy and policies.

OFFICER RECOMMENDATION ITEM 8.1

That....

- (a) in accordance with s3.12(3)(a)(b) and (3a) of the *Local Government Act 1995*, Council gives Statewide and local public notice stating that:
 - (i) It proposes to make a *Dog Amendment Local Law*, and a summary of its purpose and effect;
 - (ii) Copies of the proposed local law may be inspected at the City's offices;
 - (iii) Submissions about the proposed local law may be made to the City within a period of not less than 6 weeks after the notice is given;
 - (iv) In accordance with s3.12(4), as soon as the notice is given, a copy be supplied to the Minister for Local Government;
 - (v) In accordance with s3.12(3)(c) of the Act, a copy of the proposed local law be supplied to any person requesting it; and
 - (vi) the results be presented to Council for consideration of any submissions received.

- (b) the Joint Standing Committee on Delegated Legislation be advised of this undertaking, and that:
 - (i) all consequential undertakings arising from this undertaking will be made;
 - (ii) Clause 4.1(1) will not be enforced in a manner contrary to this undertaking; and
 - (iii) the undertaking will be completed within 6 months of the date of the City's advice to the Committee;
 - (iv) it be provided with a copy of the minutes of this meeting; and
 - (v) where the *Dogs Local Law 2011* is made publicly available, whether in hard copy or electronic form, it will be accompanied by a copy of these undertakings.

9. CLOSURE

10. RECORD OF VOTING