



GLEN EIRA  
CITY COUNCIL

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# GLEN EIRA CITY COUNCIL SMOKE-FREE ZONES LOCAL LAW



**Glen Eira City Council  
Smoke-Free Zones Local Law**

Date made by Council — 14 December 2021  
Commencement Date — 14 December 2021  
Sunset Date — 14 December 2031

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## **Part 1- Preliminary**

### **1 Title**

This local law is the Glen Eira City Council Smoke-Free Zones Local Law and is referred to as the “Local Law”.

### **2 Objectives**

The objectives of the Local Law are to:

- (1) provide for the peace, order and good government of the municipality;
- (2) 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;
- (3) promote the health and wellbeing of residents of and visitors to the municipality;
- (4) provide mechanisms for Council to declare parts of the municipality as smoke-free zones; and
- (5) provide mechanisms for Council to proclaim parts of the municipality as smoke-free zones.

### **3 Authorising Provision**

This Local Law is made under section 71(1) of the Local Government Act 2020.

### **4 Commencement**

This Local Law comes into operation at the beginning of the day on which it is made.

### **5 To what parts of the municipality does this Local Law apply?**

This Local Law applies to all land throughout the whole of the municipality.

### **6 Scope of this Local Law**

The provisions of this Local Law apply to the extent that they are not inconsistent with—

- (1) any Act (including the **Charter of Human Rights and Responsibilities Act 2006**) or regulations applicable to Council or its municipality;
- (2) the planning scheme that is in force in the municipality; and
- (3) the film friendly principles.

### **7 Definition of words used in this Local Law**

- (1) Unless the contrary intention appears in this Local Law—

- (a) words defined in section 3(1) of the Local Government Act 2020 have the same meaning in this Local Law; and
- (b) words defined below have that meaning in this Local Law.

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

**Authorised Officer**, means a person appointed by Council to be an Authorised Officer under section 224 of the Local Government Act 1989.

**Council**, means Glen Eira City Council.

**e-cigarette** has the same meaning as in the Tobacco Act 1987.

**event** means an organised recreational, cultural, commercial or social event or a gathering of people held on a road.

**film friendly principles** have the same meaning as it has in the Filming Approval Act 2014.

**Local Government Act 1989**, means the Local Government Act 1989 (Vic).

**Local Government Act 2020**, means the Local Government Act 2020 (Vic) or any later equivalent enactment.

**municipality**, means the district under the local government of Council.

**prescribe** and **prescribed** includes resolved by Council.

**planning scheme** means the Glen Eira Planning Scheme under the **Planning and Environment Act 1987** or any replacement scheme.

**road** has the same meaning as in the Local Government Act 1989.

**shisha pipe** means a single or multi-stemmed water pipe used for vaporising and smoking flavoured tobacco, herbs or fruit mixes, the vapour or smoke of which is passed through a water basin before inhalation.

**smoke** has the same meaning as in the Tobacco Act 1987.

**smoke-free zone** has the meaning ascribed to it by clause 9(1) of this Local Law.

**tobacco product** has the same meaning as in the Tobacco Act 1987.

- (2) Headings above each clause, introductions to parts and notes do not form part of this Local Law.

## **8 Delegations**

- (1) Under section 78 of the Local Government Act 2020, Council hereby delegates to the Chief Executive Officer and Authorised Officers all the powers, discretions, authorities and considerations of Council under this Local Law to do any act, matter

or thing necessary or incidental to the exercise of any function or power by Council under this Local Law.

- (2) Notwithstanding subclause (1), Council does not delegate to:
  - (a) the Chief Executive Officer and Authorised Officers the powers, discretions, authorities and considerations of Council under subclause 9(2); or
  - (b) Authorised Officers the powers, discretions, authorities and considerations of Council under subclause 9(5).

## **Part 2 – Smoke-Free Zones**

### **9 Prescribing and Declaring Smoke-Free Zones**

- (1) In this Local Law, a smoke-free zone means any area within the municipality that is:
  - (a) prescribed to be a smoke-free zone in accordance with subclause (2); or
  - (b) declared to be a smoke-free zone in accordance with subclause (5).
- (2) Council may prescribe any area within the municipality to be a smoke-free zone.
- (3) The prescription under subclause (2) may be unconditional or limited to certain times of the day, certain days of the year, defined public holiday periods, special events or particular places.
- (4) When determining whether to prescribe an area as a smoke-free zone for the purposes of subclause (2), Council must have regard to the following factors:
  - (a) the size of the proposed smoke-free zone;
  - (b) the proximity of the proposed smoke-free zone to a public place, part or all of which is not in a smoke-free zone;
  - (c) the opinions of any person who is the owner or occupier of any part of the proposed smoke-free zone;
  - (d) the opinions of any person who is the owner or occupier of any part of the area immediately adjoining the proposed smoke-free zone;
  - (e) the extent and outcome of any community engagement on the proposed smoke-free zone;
  - (f) any evidence of benefits to the community which would be achieved by Council prescribing the proposed smoke-free zone;
  - (g) any evidence of detriments to the community which would be caused by Council prescribing the proposed smoke-free zone; and
  - (h) any other factors that Council considers relevant.
- (5) In addition to the smoke-free zones prescribed in accordance with subclause (2), Council may declare any other area within the municipality to be a smoke-free zone.
- (6) A declaration under subclause (5) must be limited by reference to a specified event on a particular day, during specified times on that day.
- (7) Any prescription under subclause (2) or declaration under subclause (5) (including details of the relevant areas, times and dates referred to in the prescription or declaration) must be published by Council by giving public notice at least 14 days before the prescription or declaration (as the case may be) takes effect by:
  - (a) giving notice on Council’s website;

- (b) giving notice on a publicly accessible notice board at the principal office of Council; and
  - (c) retaining a copy of the public notice in the register of prescriptions and declarations to be kept with this Local Law from the date of the notice until the restrictions have ceased to operate.
- (8) Council may erect, or cause to be erected, an acceptable no smoking sign in or proximate to a smoke-free zone.

Note: maps showing smoke-free zones are available from the Service Centre, Glen Eira City Council Town Hall or by visiting [www.gleneira.vic.gov.au](http://www.gleneira.vic.gov.au).



### **Part 3 - No Smoking in Smoke-Free Zones**

Introduction: The following clause prohibits smoking in smoke-free zones within the municipality.

#### **10 Smoke-Free Zone: offence by smoker**

- (1) A person must not smoke in a smoke-free zone.
- (2) A person must not smoke or otherwise have control over an ignited shisha pipe or associated apparatus in a smoke-free zone.

Penalty: 5 penalty units.

- (3) Where an Authorised Officer believes on reasonable grounds that a person is contravening or has contravened subclauses (1) or (2) the Authorised Officer may direct the person to:
  - (a) in the case of a tobacco product, extinguish and then dispose of the tobacco product; or
  - (b) in the case of an e-cigarette, cease using the device; or
  - (c) in the case of shisha pipe or associated apparatus, cease using the device.
- (4) A person to whom a direction is given under subclause (3) must comply with that direction.

Penalty: 5 penalty units.

## **Part 4 – Offences and Infringement Notices**

Introduction: This Part provides for enforcement of this Local Law by service of infringement notices by Authorised Officers.

### **11 Offences**

A person who—

- (1) contravenes any provision of this Local Law; or
- (2) fails to comply with a direction of an Authorised Officer under this Local Law

is guilty of an offence and is liable to—

- (a) the penalty stated under a provision in this Local Law, or if no penalty is stated then twenty (20) penalty units; and
- (b) upon a finding of guilt by any court for a second or subsequent offence, a penalty of twenty (20) penalty units will apply (unless otherwise stated).

### **12 Infringement Notices**

As an alternative to prosecution, an Authorised Officer may issue an infringement notice on a person who the Authorised Officer believes has committed an infringement offence referred to in an item in Schedule 1 requiring the person to pay the infringement penalty specified in column A of Schedule 1 for that infringement offence.

**Schedule 1**  
**Infringement offences**

		<b>Column A</b>
<b>Item</b>	<b>Infringement offence</b>	<b>Infringement penalty</b>
1	An offence against clause 10(1)	1 penalty unit
2	An offence against clause 10(2)	1 penalty unit
3	An offence against clause 10(4)	1 penalty unit



GLEN EIRA  
CITY COUNCIL

## Glen Eira City Council

Corner Glen Eira and Hawthorn Roads, Caulfield

Mail address: PO Box 42

Caulfield South, 3162

Phone: (03) 9524 3333

Fax: (03) 9523 0339

mail@gleneira.vic.gov.au

www.gleneira.vic.gov.au

### National Relay Service

If you are deaf, hearing-impaired, or speech-impaired, we ask that you call us via the National Relay Service and then ask for (03) 9524 3333.

Online: <https://internet-relay.nrscall.gov.au>

Teletypewriter (TTY): 13 36 77

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### Social media

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[www.facebook.com/GlenEiraCityCouncil](http://www.facebook.com/GlenEiraCityCouncil)

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