

12.2 Policy and Legislation Committee - 28/08/2018 - STANDING ORDERS LOCAL LAW AMENDMENT

<b>SUBJECT INDEX:</b>	Local Laws
<b>STRATEGIC OBJECTIVE:</b>	Governance systems, process and practices are responsible, ethical and transparent.
<b>BUSINESS UNIT:</b>	Corporate Services
<b>ACTIVITY UNIT:</b>	Legal Services
<b>REPORTING OFFICER:</b>	Legal Officer - Briony McGinty
<b>AUTHORISING OFFICER:</b>	Director Finance and Corporate Services - Tony Nottle
<b>VOTING REQUIREMENT:</b>	Simple Majority
<b>ATTACHMENTS:</b>	Attachment A Amendment Local Law Attachment B Current Standing Orders

**This item was considered by the Policy and Legislation Committee at its meeting on 28 August 2018, the recommendations from which have been included in this report.**

### PRÉCIS

The City's Standing Orders Local Law 2018 (**Standing Orders**) was published in the government gazette on 4 April 2018 and came into effect shortly thereafter. An amendment to the Standing Orders Local Law has been prepared (**Amendment Local Law**) for consideration by the Council. It is recommended that the Council initiate the law-making process and authorise the CEO to commence advertising the Amendment Local Law.

### BACKGROUND

Following gazettal of the Standing Orders, the Joint Standing Committee on Delegated Legislation (**JSC**) wrote to the City seeking an undertaking to amend certain provisions of the Standing Orders. On 25 July 2018 the Council resolved to provide the following undertaking to the JSC:

*"That the Council undertakes to the Joint Standing Committee on Delegated Legislation that:*

1. *within six months, the City will make the following amendments to the City of Busselton Standing Orders Local Law 2018:*
  - (a) *Amend clause 6.7(6)(c) to read as follows:*

*the member of the public asks a question that is offensive or defamatory in nature or is one which, if asked by a member, would be in breach of these standing orders or any other law, provided that the presiding member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory, or does not breach these Standing Orders or any other law.*
  - (a) *Amend clause 5.10(6) by deleting the words 'Local Government'.*
  - (b) *Amend clause 8.16(1) by deleting the figure '16' and inserting '15' in its place.*
  - (c) *Amend clause 10.18(2) by deleting the phrase ', the member'.*
  - (d) *Amend clause 11.6(2) by deleting the figure '5.6' and inserting '5.10' in its place.*
2. *until the Local Law is amended in accordance with undertaking 1, the City will:*

- (a) *not enforce the Local Law in a manner contrary to undertaking 1.*
- (b) *where the Local Law is made publicly available, whether in hard copy or electronic form (including on the City's website), ensure that it is accompanied by a copy of these undertakings.*

As the City has undertaken to the JSC to amend the Standing Orders, it is also considered an opportunity to amend two other matters that have been identified by the City with regard to the Standing Orders. The two issues are the Order of Business and the timing of Notices of Motion. These issues are discussed further below under Officer Comment.

## **STATUTORY ENVIRONMENT**

Section 3.5 of the Act provides Council with the head of power for making a standing orders local law.

Section 42 of the *Interpretation Act 1984* allows the WA State Parliament to disallow a local law, which is a mechanism to guard against the making of subsidiary legislation that is not authorised or contemplated by the empowering enactment, has an adverse effect on existing rights or ousts or modifies the rules of fairness. Parliament has appointed the JSC to undertake an advisory role on its behalf, which includes the power to scrutinise and recommend to the Parliament the disallowance of local laws to the Parliament.

Any correspondence received by the JSC is confidential and privileged. Disclosure of such information may be referred to the Legislative Council Procedure and Privileges Committee for investigation and possible penalty as contempt of Parliament.

## **RELEVANT PLANS AND POLICIES**

There are no plans or other policies relevant to this matter.

## **FINANCIAL IMPLICATIONS**

Costs associated with the advertising and gazettal of an amendment to the Standing Orders will come from the legal budget. These costs are unlikely to exceed \$2,000 and there are sufficient funds in the legal budget for this purpose.

### **Long-term Financial Plan Implications**

The adoption of the Officer's recommendation has no long term financial plan implications.

## **STRATEGIC COMMUNITY OBJECTIVES**

This proposal aligns with Key Goal Area 6 of the *City of Busselton Strategic Community Plan 2017* as follows:

*6.1 Governance systems, processes and practices are responsible, ethical and transparent.*

## **RISK ASSESSMENT**

The Amendment Local Law will not involve a significant departure from current practices and is therefore considered low risk.

## CONSULTATION

Should Council resolve to commence the process of amending the Standing Orders the City is required to undertake the notice requirements under Section 3.12(3) of the Act.

## OFFICER COMMENT

### Undertaking to JSC

Clause 6.7 of the Standing Orders deals with the procedures for public question time during meetings. Sub-clause (6)(c) provides that:

*The presiding member may decide that a question is not to be responded to where –*

.....

*(c) the member of the public asks a question that is offensive or defamatory in nature or is one which, if asked by a member, would be in breach of these standing orders or any other law;*

The undertaking to the JSC requires that clause 6.7(6)(c) be amended so that the Presiding Member can only rule that the question will not be answered where she or he has first attempted to assist the member of the public to rephrase their question. The Presiding Member need only take “reasonable steps”. The purpose of this amendment is to ensure that members of the public have a genuine opportunity to participate in question time.

Minor drafting improvements (which were part of the undertaking to the JSC) have also been included in the Amendment Local Law.

### Order of Business

Improvements to the Order of Business under clause 5.2 have also been identified, for the purpose of grouping together ‘non-voting’ and ‘voting’ matters.

It would be more consistent for “Petitions, presentations and deputations” and “Questions by members of which due notice has been given (without discussion)” to immediately follow “public question time”, so that input from the public that does not require voting by Council is dealt with together. These three ‘non-voting’ items have now been grouped together.

Under regulation 7(2) of the *Local Government (Administration) Regulations 1996*, any matter that requires a decision of Council should be dealt with after “public question time”. The item “Applications for leave of absence” is a matter that must be voted on. Accordingly, the “Applications for leave of absence” item has been moved to after the “Confirmation of minutes” item, and these now form part of the voting matters that follow the non-voting matters.

### Notices of Motion

The Standing Orders currently provide that a member must provide a notice of motion at least 10 clear days before the meeting at which the motion is moved. It is generally expected and understood that this means a notice of motion should be provided, at a minimum, on the Friday before the Agenda Briefing Session in order for it to be included on the Council Agenda, which is also typically released on that Friday. However, it is open to interpretation that a notice of motion could arguably validly be provided (within the 10 days) on the Saturday. This would create both administrative and governance issues. If accepted, the notice of motion would need to be included on the Council Agenda as a “late item”. It could also not be included in the initial public advertising for the Council meeting due to publication deadlines. It could still be included as an additional item in the follow up

public advertisement, however, this would only be on the day of the Council meeting. These all serve to potentially impact upon the transparency of, and the public participation in, the potential notice of motion.

It is recommended that clause 5.8 (2) is amended to 12 clear days, which would make clear that a notice of motion must be provided by the Thursday prior to the release of the Council agenda on the Friday and the Agenda Briefing Session (thus allowing it to be included in the original published agenda, and advertised publicly).

## **CONCLUSION**

It is recommended that the Council initiate the law-making process and authorise the CEO to commence advertising the Amendment Local Law.

## **OPTIONS**

As the City has previously provided an undertaking to the JSC in relation to this matter it is not recommended to pursue other options with regard to those matters contained in the undertaking.

However, in relation to the other matters, the Council could choose to vary the provisions of the Amendment Local Law in any number of ways. This is, however, the form of local law recommended at this stage for the reasons stated in the report. There will be further opportunity for making changes to the Amendment Local Law following advertising and consultation, provided the changes are not significantly different from what is currently proposed. If any changes are of a significant nature the Amendment Local Law would need to be re-advertised.

## **TIMELINE FOR IMPLEMENTATION OF OFFICER RECOMMENDATION**

Within two weeks of the Council decision to commence the law-making process, the Amendment Local Law will be advertised for public comment. The statutory consultation period is a minimum of six weeks and following the close of the advertising period a report will be submitted to the Council for further consideration which, depending on the number and nature of submissions received, could be within three months.

## **COMMITTEE RECOMMENDATION AND OFFICER RECOMMENDATION**

**PL1808/001** Moved Councillor K Hick, seconded Councillor G Henley

(1) That the Council commences the law-making process, for the *City of Busselton Standing Orders Amendment Local Law 2018*, the purpose and effect of the local law being as follows:

Purpose: To clarify requirements in relation to public question time and to make minor drafting and operational amendments.

Effect: To ensure public question time is effective and to improve the operation of the Standing Orders.

(2) That the Council authorises the CEO to carry out the law-making procedure under section 3.12(3) of the *Local Government Act*, by –

(i) giving Statewide public notice and local public notice of the Amendment Local Law; and  
(ii) giving a copy of the Amendment Local Law and public notice to the Minister for Local Government.

(3) That the CEO, after the close of the public consultation period, submits a report to the Council on any submissions received on the Amendment Local Law to enable the Council to consider the submissions made and to determine whether to make the local law in accordance with section 3.12(4) of the Act.

**CARRIED 5/**

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