

## Speech to Brisbane City Council – Tuesday 8<sup>th</sup> December 2009-12-16

### Health, Safety and Amenity Local Law – Edited Transcript

Councillor FLESSER: Thank you, Madam Chair. Madam Chair, I'll talk about the Health, Safety and Amenity Local Law.

Earlier today when debating the new local law that's going to rip money out of motorists' pockets through parking metres, the LORD MAYOR said: "do you enforce laws you put in place or do you allow a free for all?"

In other words, the laws that this Council puts in place have got to be followed absolutely to the letter. In this local law, I see a number of areas where if we did that, our constituents would absolutely revolt, Madam Chair.

There's four particular areas I have concerns with and that's the fires area, the unsightly objects, the graffiti, of course, and the failure to give information. I'll start with fires, Madam Chair.

I suppose the question I ask, is this local law actually going to apply to the Council because, Madam Chair, one thing this Council has to do is demonstrate that we can meet the same standards that we're asking our constituents to meet and that we can do it ourselves, Madam Chair.

I am really concerned that under the fires, under part 2, where the owner of land where a fire has been lit is deemed to be the person who may get a fine if that fire was lit on that land unless they can provide some sufficient evidence to the contrary.

So Madam Chair, here we've got in this local law where you're deemed to be the person who lit a fire on your land. If you're the owner of that land, you're deemed to be the person and you can cop a \$2000 fine.

The only way you can get out of that, is if you have sufficient evidence to the contrary. Well, Madam Chair, I believe there's a principle of law that surely you don't have to provide evidence to get out of a fine that the Council is applying to you or anyone's applying to you, Madam Chair, that the onus is on the body enforcing the fine.

Madam Chair, here we've got a situation where residents are going to be deemed to have been the people responsible for a fire and could cop a \$2000 fine unless they can provide some evidence to the contrary.

It won't be just good enough to say: no, I didn't light the fire. They've got to provide some evidence that they didn't light the fire. So Madam Chair, I'm really concerned about that and I think that most residents who live in rural areas, in acreage areas, would also be concerned.

Madam Chair, the second area I'm concerned about is the unsightly objects, materials or vegetation. Now, Madam Chair, we all know, all remember Darryl Kerrigan in *The Castle*. Well, Madam Chair, I think that a lot of residents would be saying to the LORD MAYOR today: "tell him he's dreaming", because what we've got here is an item where an authorised person is going to be the person out there making some determination about what is nice to look at and what's not nice to look at.

There's examples in here about broken down vehicles. So if you've got a broken down vehicle in your yard and your neighbour may be not speaking to you or has a vendetta against you, they can complain to the Council and in the end, that person with the broken down vehicle in the yard could be up for a \$2000 fine.

Now, Madam Chair, I hope that that certainly wouldn't happen but the strict reading of this local law states that people with unsightly yards can be fined up to \$2000. Madam Chair, I'm really concerned we're putting Council officers in a situation where they've got to go and be the determiners of what is sightly and what's unsightly.

So Madam Chair, I strongly believe that that section should be much more strongly written. I think that it's certainly up to a lot of interpretation and I suspect that Council is going to have problems with that in the future.

Madam Chair, I get on to graffiti and here this is a section where Council is going to punish the victims of graffiti fine. Madam Chair, asking residents to clean up graffiti on their yards, or business owners on their properties within 14 days...and if they don't they're up for a fine between 500 and \$5000.

Now, clearly this is an area where the Council officers are going to have to work very carefully with. But Madam Chair, if we go on what the LORD MAYOR said, these laws are going to be 'enforced'.

You don't just bring in laws and then "just allow a free for all." So I'm really concerned that what's going to happen here is the Council officers are probably going to read those words of the LORD MAYOR that you've got

to enforce these laws and what we'll see is residents and business owners being forced to pay fines for cleaning up graffiti that they didn't put there; that they didn't put there, Madam Chair.

Certainly there'll be some businesses and people that have the facilities or the wherewithal to clean up the graffiti but, there are lots of residents in Brisbane who may not have the ability to do that.

I'm afraid that the way this local law is written, clearly the intention is to punish the victims of graffiti crime. Now, what about graffiti on Council premises? Madam Chair, are we going to apply the same principles to graffiti on Council property?

So two weeks, more than two weeks? When are we going to give ourselves a fine? Madam Chair, I think that people are going to see this part of the local law and they're going to think: well, okay, what we see around the place is that there certainly is graffiti on Council property, that's not cleaned up within two weeks.

I think that people are going to pick that out and approach Councillors and ask us to practice what we preach.

So Madam Chair, we'll go on to the area—the last area I was concerned about and that's the failure to give information.

Now, Madam chair, this is quite curious 'cause there's a clause in there that says—this is in relation to an officer doing an enquiry and it says that it's “not a reasonable excuse for a person who failed to give the information because giving the information might tend to incriminate the person.”

Well, Madam Chair, it's my understanding there's the legal principle and that you don't have to give evidence against yourself that may incriminate yourself. It's a right to silence. But Madam Chair, what we're doing here is we're saying that there's a penalty up to \$5000 if you don't agree to give information which may incriminate yourself.

Then the next paragraph is really curious because it says: well, in that evidence, if you do give evidence that incriminates yourself, it might not be admissible in a civil or criminal proceeding.

So Madam Chair, we really need an explanation about what that means. So we're going to fine people for not agreeing to give evidence against themselves, a fine of up to \$5000. Then we're saying, well, even if you do

give evidence against yourself, it might not be admissible in civil or criminal proceedings.

So Madam Chair, I do believe that there's lots and lots of holes in this local law. I think it's been badly written. I'm particularly disturbed about punishing the victims of graffiti vandalism and Madam Chair, I cannot support this local law today.

Chairman:

Further debate? Yes, Councillor CUMMING.