

ITEM 7. SMOKING IN THE PUBLIC DOMAIN**FILE NO: S041093****SUMMARY**

At its meeting on 27 August 2007, Council considered the *Smoking Ban Issues and Options Paper* and resolved that “a report be prepared for Council detailing recommendations based on current research or activities undertaken in other jurisdictions, for example, second-hand smoke impacts, approaches to smoking in playgrounds, sportsgrounds, and civic spaces.”

Council officers have completed the research into smoking in the public domain, and the *Smoking in the Public Domain – Issues and Options Paper* is attached. The key findings from the research are that:

- a) 58 NSW councils have adopted some form of smoking prohibition in a variety of public spaces including playgrounds, sporting facilities, council events, malls and plazas, beaches, parks, outdoor dining areas and parks;
- b) NSW councils do not have a direct power to ban smoking in a public place, but can prohibit smoking in a public place through the installation of ordinance signage;
- c) many NSW councils report difficulties in effectively resourcing and enforcing smoking prohibitions, and there is limited evidence of the effectiveness of these approaches;
- d) councils appear to rely on the public to self regulate, by choosing to comply with prohibition signage or to police smoking by others, rather than relying on enforcement by council officers. This approach is recommended by the NSW Cancer Council and NSW Heart Foundation; and
- e) the impacts of smoking in the public domain, such as tobacco smoke (passive smoking, smoke congestion and smoke drift), litter and social impacts, have notably increased in the City of Sydney Local Government Area since the full implementation of the Smoke-free Environment Legislation from 2 July 2007.

The City already undertakes a number of actions to address the impact of smoking in the public domain including the Zero Waste Partners program, Butt Blitz campaigns, enforcement of littering offences, ashtray provision and installation enforcement, refusal of tobacco sponsorship, prohibition of tobacco sales and promotions from mobile sites and an outdoor dining ashtray provision requirement.

It is recommended that Council also develop a policy to direct the management of smoking in the public domain in the City, which may include:

- a) installing “no smoking” signage to prohibit smoking at the entrance to the City’s children’s playgrounds, community centres, and in covered seating areas and grandstands at City sports facilities.
- b) installing “courtesy signage” in malls, plazas and civic spaces, bus and taxi waiting areas, and making public announcements at all City events;

- c) undertaking a public awareness campaign about the courtesy signage;
- d) increasing installation of ashtrays;
- e) forming a group of key City staff to further investigate issues around outdoor dining smoking bans and viability of designated outdoor smoking areas; and
- f) advocating to the State Government for enhanced state legislation and funding to manage smoking in the public domain.

RECOMMENDATION

It is resolved that the City develop a policy to direct the management of smoking in the public domain, including timeframes and costs. The key policy directions may include that:

- (a) the City install “no smoking” signage at the entrance to the City’s children’s playgrounds, community centres, and in covered seating areas and grandstands at City sports facilities;
- (b) the City install “courtesy signage” in key malls, plazas and civic spaces, bus and taxi waiting areas, and make announcements about smoking etiquette at all City events;
- (c) the City work with key agencies to deliver a public awareness campaign about the courtesy signage;
- (d) the City increase installation of bins and ashtrays;
- (e) a group of key City staff further investigate issues around outdoor dining smoking bans and viability of designated outdoor smoking areas; and
- (f) the City advocate to the State Government for enhanced state legislation and state funding that supports measures by councils across NSW to manage smoking in the public domain.

ATTACHMENTS

Attachment A: Smoking in the Public Domain Issues and Options Paper

Attachment B: List of services consulted in the development of the Smoking in the Public Domain Issues and Options Paper

Attachment C: Smoke-free Outdoor Areas Resource Kit

BACKGROUND

1. On 27 August 2007, Council considered the recommendations from the *Smoking Ban Issues and Options Paper* and resolved that “a report be prepared for Council detailing recommendations based on current research or activities undertaken in other jurisdictions, for example, second-hand smoke impacts, approaches to smoking in playgrounds, sportsgrounds, and civic spaces.”
2. Council officers have undertaken research into smoking in the public domain as detailed in the *Smoking in the Public Domain – Issues and Options Paper* at Attachment A. Details of people consulted during preparation of the *Smoking in the Public Domain – Issues and Options Paper* are at Attachment B.
3. The intention of the *NSW Smoke-free Environment Act 2000* has been to gradually eliminate smoking from indoor areas that are not private homes. While this has contributed to a reduction in indoor smoking in NSW, it has also resulted in an increase in people smoking in the public domain, most notably since the introduction on 2 July 2007 of a ban on smoking in enclosed spaces in licensed premises.
4. A *Smoke-free Outdoor Areas* resource kit was released by the Cancer Council NSW on 31 May 2007, endorsed by the NSW Local Government and Shires Association and promoted as a model by the Australian Local Government Association. The kit provides information to councils about creating smoke-free areas in a variety of public locations and outlines enforcement powers under the *Local Government Act*, but takes a realistic view of the enforcement of non-smoking signage and suggests implementation through persuasion and self-policing. An updated version of the kit has just been released and is at Attachment C.
5. Many local government areas have based their approaches to smoking in the public domain on recommendations in the *Smoke-free Outdoor Areas* resource kit. Approximately 58 NSW councils have adopted some form of smoking prohibition in a variety of public spaces including playgrounds, sporting facilities, council events, malls and plazas, beaches, parks and outdoor dining areas.
6. Many councils confirm difficulties in resourcing and enforcing smoking prohibited areas and, instead, rely on individuals to self-regulate or police the signage as recommended in the *Smoke-free Outdoor Areas* resource kit.
7. Additionally, the *Smoke-free Outdoor Areas* resource kit has a focus on suburban and regional councils. This does not address the issues for Sydney as an urban, global city. The research of the Cancer Council is not based on the experiences of big international cities like Sydney, which are impacted by a large influx of workers and visitors daily. Naturally, this context has implications for the way that this issue should be addressed. Following recent meetings with City staff, the Cancer Council has agreed to research approaches to this issue by global cities such as New York.
8. The impacts of smoking in the public domain, such as tobacco smoke (passive smoking, smoke congestion and smoke drift), litter and social impacts, have notably increased in the City of Sydney Local Government Area since the full implementation of the *Smoke-free Environment Legislation* from 2 July 2007.

9. The major impacts for local government arising from people smoking in the public domain are:
 - (a) environmental impacts including cigarette butt and packaging litter and stormwater pollution;
 - (b) health impacts including second-hand smoke, smoke congestion and smoke drift; and
 - (c) social impacts including footpath obstruction, noise, street drinking in an Alcohol Free Zone (if outside a licensed premise), and anti-social behaviour (especially if the person is intoxicated).
10. The primary locations in the City affected by outdoor smoking, and from which the City receives the most complaints include:
 - (a) outside CBD office blocks;
 - (b) areas that children frequent;
 - (c) on benches in parks or plazas; and
 - (d) outside licensed premises.
11. The City is already undertaking a number of actions to address smoking in the public domain including the Zero Waste Partners program, Butt Blitz campaigns, enforcement of littering offences, ashtray provision and installation enforcement, refusal of tobacco sponsorship, prohibition of tobacco sales and promotions from mobile sites, and an outdoor dining ashtray provision requirement. Additional details of the City's activities are outlined in Attachment A.
12. Additional measures identified in the *Smoking in the Public Domain Issues and Options Paper* that the City could consider undertaking include:
 - (a) developing a Council policy to direct the management of smoking in the public domain in the City for the next five years;
 - (b) prohibiting smoking at the City's children's playgrounds, community centres, and in enclosed covered seating and grandstands at Council sports facilities.
 - (c) installing "courtesy signage" in malls, plazas and civic spaces, bus and taxi waiting areas, and make announcements at all City events. Examples for wording on signs and public announcements at events could include: "Think before you light up", "Ask before lighting up – don't smoke here if it disturbs others";
 - (d) undertaking a public awareness campaign about the courtesy signage sensitive to the needs of culturally and linguistically diverse and disadvantaged communities;

- (e) increasing installation of ashtrays;
 - (f) forming a group of key City staff to further investigate issues around outdoor dining smoking bans and viability of designated outdoor smoking areas; and
 - (g) advocating to the State Government for enhanced state legislation and funding to manage smoking in the public domain in line with the National Preventative Health Taskforce Technical Paper on Smoking.
13. City staff will prepare a clear policy which incorporates these measures and will guide City action on smoking in the public domain. During the development of this policy, City staff would continue to implement existing actions and fast track new measures for implementation in the 2010/11 financial year.

KEY IMPLICATIONS

Organisational Impact

14. **Enforcement Issues:** The City has an indirect power to prohibit smoking in a public place by installing an ordinance sign prohibiting smoking in parks, streets, car parks, beaches and other outdoor spaces where Council is the consent authority. Without the signage, it is not an offence to smoke. City Rangers (as authorised officers) have the power, under the *Local Government Act 1993*, to fine smokers in their enforcement of the ordinance signage.
15. Whilst the City has an option to install ordinance signage in numerous locations, the responsibility to enforce this level of signage would place an unreasonable burden on the resources of City Rangers and is logistically impractical.
16. Additionally, ordinance signage prohibiting smoking creates a community expectation that it will be enforced. As the City Rangers may not have the capacity to enforce this signage, this could potentially create confusion and anger in the community. Consequently, an approach using "courtesy signage", coupled with education for the public, is supported.
17. The City also needs a policy to guide City Rangers on enforcement in prohibited locations, and the concept of "courtesy signage". High profile operations such as the annual "Butt Blitz" may need to be increased to coincide with any new measures on smoking in the public domain endorsed by Council. Increased revenue from fines is unlikely to offset the extra cost, based on current patterns.
18. Between February 2007 and February 2008, 1163 cigarette butt litter infringements were issued to smokers. Of those 1163 fines:
- (a) 39% have been paid;
 - (b) 19% ended in debt recovery;
 - (c) 5% had insufficient information to proceed to debt recovery;
 - (d) 20% were being processed by the Infringement Processing Bureau; and
 - (e) 17% had been issued, but not yet sent to the Infringement Processing Bureau.

Social / Cultural / Community

19. Some marginalised populations have much higher rates of smoking than other sections of the population, and this needs to be considered during the development of responses to smoking in public places. According to the Cancer Council's Tobacco Control and Social Equity Strategy, smoking rates of some disadvantaged groups compared to the average NSW smoking rate of 18% are:
- | | |
|----------------------------------|---------|
| (a) younger people aged 16-34 | 25-30% |
| (b) low income single parents | 45% |
| (c) Aboriginal people | 50% |
| (d) people in prison | 70-80% |
| (e) people with a mental illness | 70-90% |
| (f) people in drug treatment | 75-100% |

Environmental

20. **Waste Management and Education:** Cigarettes are the most littered item in the world, making up 50% of litter in NSW. At least seven billion cigarettes are discarded in Australia each year. Cigarette butts are not biodegradable and can take up to five years to break down. Many end up in gutters and get washed out to sea, leaching chemicals into aquatic ecosystems, and can cause death in birds and animals if ingested.¹ City waste staff estimate that, since July 2007, the volume of butt litter has increased by 20%, while the number of butt litter hotspots has increased by 35%. A recent survey by the City of Sydney: *Pure Profile Sydney Smokers Survey 2008*, shows that half of all smokers admit to littering cigarette butts even though 94% know it damages the environment.

¹ Zero Waste Partners:

<http://www.cityofsydney.nsw.gov.au/Environment/ZeroWastePartners/WasteTheBigPicture.asp>

21. Increasing the number of ashtrays in public areas, particularly areas where smoking is prevalent, will see a reduction in the amount of cigarette butts littered. The *Pure Profile Sydney Smokers Survey 2008* showed that although over 54% of smokers surveyed had littered cigarette butts, 99% of people would put their cigarette butts in ashtrays or bins if more were present. The Zero Waste Partners Program continues to promote increased installation of ashtrays to businesses on their premises. The design of the JC Decaux bins that are used in the City of Sydney will need to be evaluated in terms of its capacity to extinguish, contain, and store cigarette butt litter.
22. As butt-bins tend to be located in areas where people smoke, they may give de-facto permission to smoke (for example, next to benches in Pitt Street Mall). Bin designs should therefore integrate a facility to extinguish cigarettes and dispose of them without other litter catching fire. Recyclable personal ashtray provision could be implemented at all major outdoor City events, such as New Year's Eve.

BUDGET IMPLICATIONS

23. Should Council resolve to adopt the recommendation, a policy will be developed to identify any potential costs, such as for the production and installation of prohibition and courtesy signage, the possible redesign of JC Decaux waste bins, and the public information and health promotion campaigns.
24. These costs have not been included within the 2009/10 budget, but will be considered in the preparation of the 2010/11 budget.

RELEVANT LEGISLATION

25. The City has an indirect power under section 632 of the *Local Government Act 1993* (the Act) to regulate smoking in a public place by erecting signage which prohibits smoking in that place.
26. It is an offence for a person to fail to comply with the terms of the sign. Without the sign there is no offence.
27. In addition, an offence is only committed if the sign is clearly legible and placed in a prominent place (Section 670 of the Act).
28. If a person fails to comply with the terms of a sign, the City may issue a penalty infringement notice in the amount of \$110 (section 679 of the Act and clauses 398 and 399 of the *Local Government (General) Regulations 2005*).
29. An authorised person (ie: a City Ranger) may demand the name and residential address of a person reasonably suspected of committing the offence (section 680 of the Act). Failure to provide a name and address, or providing a false name and address, is also an offence. Otherwise, the City has no power to confiscate a cigarette or to make someone stop smoking.
30. *NSW Smoke-free Environment Act 2000*.

OPTIONS

31. **Ban smoking in all spaces in the public domain** – The prohibition of smoking in the public domain relies on enforcement resources, and the City has limited resources, as do all councils, to enforce smoking prohibition on this scale. This option is therefore not recommended.
32. **Maintain the status quo** – There is momentum in the area of local government to address smoking in the public domain that has been considerably increased by the introduction of Smoke-free legislation in July 2007. Community expectations reflected in complaints about smoking impacts in the public domain indicate significant sections of the community expect the City to address impacts in a meaningful way. This option is therefore not recommended.

33. **Employ an integrated approach** – The banning of smoking in targeted locations; the use of courtesy signage encouraging community regulation and monitoring; a public awareness campaign; the formation of a City smoking working group to investigate ongoing issues and look at responses for outdoor smoking, such as investigation of designated smoking areas; a more coordinated cleaning, compliance and planning policy response; and state legislation on outdoor smoking is required to manage existing and to reduce further impacts from smoking in public spaces. This approach is recommended.

PUBLIC CONSULTATION

34. Local government areas across NSW and Australia were contacted to determine what strategies they had in place to address impacts from smoking in the public domain, as well as the relative success and shortcomings of their approaches in the preparation of research for this report. A list of services consulted is at Attachment B.
35. The public will be consulted during policy development.

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