

Leicester  
City Council

**WARDS AFFECTED: All**

**DECISION TIMETABLE:**

Cabinet  
Employees Committee

25th September, 2006  
TBC

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**Revised smoking policy for the City Council**

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**Report of the Corporate Director and Town Clerk**

**1. Purpose of Report**

The purpose of the report is to seek Cabinet support for a revised smoking policy for the City Council.

**2. Summary**

The City Council has chosen to review its current smoking policy ahead of legislation that will ban smoking in enclosed public spaces and workplaces from the summer of 2007. This report provides recommendations for a revised smoking policy for City Council workplaces and retail outlets, with implementation commencing in the New Year and completed by March 2007.

**3. Recommendations (or OPTIONS)**

That Cabinet:

- a) Note the feedback from the internal consultation process (see section 3 and Appendix 1).
- b) Approve the revised smoking policy, as set out in section 4.1 of the report and the implementation plan as set out in section 5 of the report.
- c) Refer the policy to the Employees Committee for approval, in so far as the changes that relate to terms and conditions.

**4. Headline Financial and legal Implications**

**Legal implications**

Case law supports the recommendations in so far as the introduction of a smoking ban does not amount to a fundamental breach of the contract of employment. The reason being there is no contractual entitlement to either paid or unpaid smoking breaks.

The case, (Dryden v. Greater Glasgow Health Board 1992 IRLR 469) concerned the introduction of a complete smoking ban of which notice of the ban was given together with offers of advice and counselling. The employee's claim that the change in policy was a fundamental breach of contract which entitled her to resign and claim constructive (unfair) dismissal, was dismissed on appeal and the case remains good law.

Alison Mapp, Legal Services x7059

### **Financial implications**

The report focuses on the issues facing the City Council as an employer, in compliance with forthcoming legislation on smoking. The current allowance of 15 minutes per day (for some employees) costs (based on the council's average at Spinal Point 20) approximately £600 per employee per annum in lost working time.

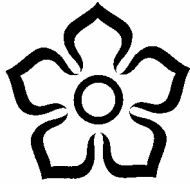
Andy Morley, Chief Accountant x 7404

### **5. Report Author/Officer to contact:**

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### **DECISION STATUS**

<b>Key Decision</b>	No
<b>Reason</b>	N/A
<b>Appeared in Forward Plan</b>	N/A
<b>Executive or Council Decision</b>	Executive (Cabinet)



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**SUPPORTING INFORMATION**

**1. Background**

The City Council has chosen to review its current smoking policy ahead of legislation that will ban smoking in enclosed public spaces and workplaces from the summer of 2007.

**2. Reasons for change**

**2.1. Smoking legislation**

Revision of the Council's current smoking policy is unavoidable, due to the approaching Government legislation.

**2.2. The City Council's health leadership role**

- a) The Government is intending to make Local Authorities responsible for enforcing the smoking ban in businesses and premises already under their enforcement remit (over 5,500 businesses in Leicester). By reviewing and changing its own smoking policy, the City Council can show leadership and set the standard for other businesses in Leicester to follow.
- b) University Hospital Leicester implemented a smoke-free site policy in June 2006. In addition, the two Leicester Primary Care Trusts implemented smoke-free policies in January 2006. The City Council could demonstrate its leadership on health issues by adopting comparable policies.
- c) Recent research has shown the majority of the public of Leicester do not want to be exposed to second-hand tobacco smoke. Figures extrapolated for Leicester, as part of the East Midlands Big Smoke Debate 2004, show that over 80% of local respondents would prefer public places and offices to be smoke free.

- d) New research has shown the true impact of smoking on people's health locally. The Annual Report of the Director of Public Health 2005 shows 450 Leicester residents die each year because they smoke and 47 additional deaths occur due to passive smoking. In some of the Wards in the west of the city, more than one in three people are smokers.
- e) Poor health indicators are likely to have a negative impact on our CPA assessment.
- f) By restricting opportunities to smoke in the workplace, it is more likely that employees will successfully stop smoking.

### **3. Consultation on a revised smoking policy**

A wide-ranging consultation on a revised smoking policy has taken place. The consultation has included; Trade Unions, Scrutiny Committees, senior managers and a period of open consultation with employees. A summary of the consultation feedback is provided in Appendix 1. Contact has also been made with a number of other organisations that have recently introduced revised smoking policies, including; UHL, the PCTs and other Local Authorities.

Although there are some areas of agreement, e.g. the need to resolve historical rights to paid smoking breaks, there are some significant areas of disagreement. These areas of disagreement include; removal of rights to take unpaid smoking breaks during work time, and restricting smoking around entrances and exits. In particular, the views of the Trade Unions should be noted.

It should be noted that the planned internal consultation process ends on 21st September, 2006. Therefore, any further consultation feedback obtained between the date of this report being submitted and the date of Cabinet's meeting, will be forwarded as an addendum to this report.

### **4. A revised smoking policy for the Council**

#### **4.1. Recommended policy**

A revised smoking policy with the following features is recommended:

- a) Internal smoking rooms (except those exempted by the legislation) will be prohibited.
- b) Any remaining historical employee entitlements to **paid** smoking breaks will be ended.
- c) Employee entitlements to **unpaid** smoking breaks will be removed.
- d) Smoking on all Council-operated buildings and associated outdoor areas, such as depots, yards and car parks will be prohibited (including Council vehicles).
- e) Smoking around the entrances and exits by employees and other building users will be prohibited (if not covered above).

- f) The sale of tobacco products from City Council sites will be prohibited, including any tobacco advertising.
- g) Allow any employee who joins a recognised smoking cessation scheme, a finite period of paid time-off to attend smoking cessation schemes, if the sessions occur during or impact on work time. (Proposed to be 5 hours.)
- h) During implementation, provide a limited supply of one-week's nicotine replacement therapy to employees who wish to quit smoking (to be funded from current budgets).
- i) A recommendation that all City Council schools adopt policies compatible with the Council's revised smoking policy.
- j) A commitment to ensuring that smoking policies are introduced and adhered to in workplaces shared with other organisations (e.g. partner organisations).

## 4.2 Exemptions

Recognising the exemptions contained in the draft legislation, any revised policy will also need to set out necessary exemptions, particularly for residents of the Council's Elderly Persons' Homes and Hostel users.

If the Council adopts the recommended 'smoke-free' policy, the revised policy will need to give consideration to employees who work 'sleep-over' shifts, or who are prevented for operational reasons from leaving their workplace during their formal breaks, etc. Due to the practicalities of enforcement, it is also recommended that the Council's parks and open-spaces are exempted from a 'smoke-free' policy.

## 5. Timescales for implementation

A recommended implementation timetable is shown below. A phased approach to implementation provides employees with time to get used to the changes and therefore should make transition to a revised policy less problematic. It should also be noted that three months notice should be given before changes to smoking breaks are introduced.

### **1<sup>st</sup> January, 2007**

- Removed all employee and any other non-exempted internal smoking rooms from use.
- Prohibit smoking around the entrances and exits to Council buildings.

### **14<sup>th</sup> March, 2007 (to coincide with National No Smoking Day)**

- End historical employee entitlements to **paid** smoking breaks.
- End employee entitlements to **unpaid** smoking breaks.

- Prohibit smoking on all non-exempted Council-operated workplaces buildings and associated outdoor areas, such as depots, yards and car parks (including Council vehicles).
- Prohibit the sale of tobacco products from City Council sites and remove any tobacco advertising.

## **6. FINANCIAL, LEGAL AND OTHER IMPLICATIONS**

### **6.1. Financial Implications**

The report focuses on the issues facing the City Council as an employer, in compliance with forthcoming legislation on smoking. The current allowance of 15 minutes per day (for some employees) costs (based on the council's average at Spinal Point 20) approximately £600 per employee per annum in lost working time.

Andy Morley, Chief Accountant x 7404

### **6.2. Legal Implications**

Case law supports the recommendations in so far as the introduction of a smoking ban does not amount to a fundamental breach of the contract of employment. The reason being there is no contractual entitlement to either paid or unpaid smoking breaks.

The case, (Dryden v. Greater Glasgow Health Board 1992 IRLR 469) concerned the introduction of a complete smoking ban of which notice of the ban was given together with offers of advice and counselling. The employee's claim that the change in policy was a fundamental breach of contract which entitled her to resign and claim constructive (unfair) dismissal, was dismissed on appeal and the case remains good law.

#### The Council's Smoking Policy

The Smoking Policy (the "Policy") is set out under the Conditions of Service and therefore appears to give some employees contractual rights to smoking breaks. However this must be considered in light of the different rights afforded to employees under the Policy and the new Health Act 2006 (the "new Act") which will remove the right to smoke in the work place in any event.

There are effectively two categories of employees affected by the Policy and for the reasons set out below, owing to the manner in which the Policy operates, it does not necessarily impose a contractual right to smoke during work time, either paid or unpaid.

#### Category 1

There may be a group of employees who through historic arrangements, have an express right to paid smoking breaks of up to 15 minutes per day. However, the Smoking Policy restricts smoking to "smoking rooms only" i.e. there is no express right to leave the building to have a maximum 15 minute smoking break (either paid or unpaid). Accordingly, if the employees concerned wish to assert a contractual right to smoke, that right is clearly restricted to smoking rooms only as defined in the Policy.

### Category 2

All other remaining employees will fall under this category and are currently entitled as a matter of Policy, to take a maximum 15 minute smoking break per day during core working hours (restricted to smoking rooms only) provided they make up the time taken during their own time. Therefore the apparent right to smoke is unpaid.

To this end it is unlikely that the Smoking Policy gives contractual rights in such circumstances as the employees do not gain any financial or other advantage as they are required to make up for any shortfall in working time during their own time.

However, if it is argued that a contractual right does exist in these circumstances, then where there is any alleged breach of contract it is difficult to see how this loss could be quantified, given that the employee acquires no financial advantage by exercising this right.

### Best Practice

In the interests of good employee relations and to allow employees so affected, a reasonable period to adjust to the new Policy, it is reasonable for the Council as the employer, to engage in a reasonable period of consultation (which has been sufficiently undertaken with appropriate representatives and employees) and that a reasonable period of notice be given of the proposed changes to the Policy.

It should be noted that in terms of both categories of employee, once the new Act comes into force, the Council can no longer provide rooms or any facilities in the workplace for smoking (subject to a few exemptions i.e. where the workplace is also classed as an individual's home). Therefore the change to the Council's existing Policy will necessarily come about by operation of law.

In summary, for the reasons set out above, all employees should now be given 3 months notice of the proposed changes to the Policy (unless the new Act comes into force before the expiration of that 3 month period).

Alison Mapp, Legal Services x7059

### **6.3. Other Implications**

OTHER IMPLICATIONS	YES/NO	Paragraph references within supporting information
Equal Opportunities	<b>No</b>	
Policy	<b>No</b>	
Sustainable and Environmental	<b>No</b>	
Crime and Disorder	<b>No</b>	
Human Rights Act	<b>No</b>	
Elderly Persons/People on Low Income	<b>No</b>	

## 7. Risk Assessment Analysis

Risk	Likelihood L/M/H	Severity Impact L/M/H	Control Actions (if necessary/appropriate)
Failure of smokers to adhere to a revised policy.	L	L	Ensure good publicity and adequate notice is given before changes are introduced. Introduce further specific restrictions, within Corporate policy or at local level, if necessary.
Employees do not take the opportunity to quit smoking.	H	L	Ensure a clear commitment is given to supporting employees who wish to quit smoking. Restrict opportunities for employees to smoke while at work.

## 8. Background Papers – Local Government Act 1972

None.

## 9. Consultations

In addition to the committees and groups listed in Appendix 1, consultation on this report has taken place with; Ian McBride, Service Director – Business Improvement and Corporate Directors Board

## 10. Report Author

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### **Consultation Summary**

A number of internal groups (see below) have been consulted. All these groups have been asked to identify what they would support in a revised smoking policy, in particular:

- a) Should the Council actively provide information for employees wishing to quit, e.g. to sign-post them towards smoking cessation schemes.
- b) Should a revised policy prohibit smoking at entrances and exits to Council buildings.
- c) Should a revised policy prohibit smoking on all non-exempted Council sites.
- d) Should a revised policy remove any remaining historical employee rights to paid smoking breaks.
- e) Should a revised policy prohibit employees from taking any smoking breaks (paid or unpaid) within their working time.

#### **Resources & Corporate Issues Scrutiny Committee**

A report was received by the Committee on 22<sup>nd</sup> June, 06. The Committee resolved:

- 1) that wide ranging consultation takes place on a new smoking policy for the City Council;
- 2) that a proposed new City Council smoking policy is taken to Cabinet for approval; and
- 3) that the Committee broadly supports the operational policy changes apart from e) (unpaid smoking breaks) and that d) (paid smoking breaks) should be introduced gradually.

#### **Health Scrutiny Committee**

A report was received by HSC on 13<sup>th</sup> July. The Committee resolved:

'That the Committee express its support for policy changes, including optional policy changes, as set out in paragraph 4.2 of the supporting information of the report, with the exception of item e) (unpaid smoking breaks) as the Committee feels it is inappropriate for it to comment on this aspect.'

#### **Strategic Resources Group**

A report was received by SRG on 4<sup>th</sup> July. SRG supported all proposed policy changes including; removing rights to both paid and unpaid smoking breaks, and banning smoking on all non-exempted Council sites.

## **Open consultation period with employees**

A period of consultation took place with employees, publicised via internal Corporate and Departmental newsletters, which closes on 15<sup>th</sup> September 2006.

At the date of this report being submitted to Cabinet (13/9/06), around 175 employees had responded to the consultation. 60% of respondents support a complete ban on employee smoking breaks. 70% support smoking being banned anywhere on Council workplaces. Of those that didn't support a complete ban on smoking on Council workplaces, a significant proportion did want smoking to be prohibited around entrances and exits.

## **Teaching Unions**

At their meeting on the 29<sup>th</sup> June, the Teachers' Consultative Committee resolved that the issue should be referred to the Department's H&S Committee, with the view that individual schools should review their existing smoking policies in the light of a revised policy for the Council.

## **Non-teaching Unions**

Following meetings with the Trade Union members from the Employees' Consultative Forum (representing non-teaching Unions) their views are that:

- a) They support any steps the Council could take to support staff to give up smoking.
- b) They would not support any restrictions on smoking at the entrances and exits to Council buildings, unless or until it was supported by legislation.
- c) They would not support any restrictions regarding prohibiting smoking in the external areas of Council sites; due to enforceability, desire for a balanced policy and it not being required by the expected legislation.
- d) Subject to as much notice being given as possible, the TUs recognise the inconsistencies in the current allowances for paid and unpaid smoking breaks.
- e) They would not support any restrictions on employees taking unpaid smoking breaks during working time.

The Trade Union members of the Employees' Consultative Forum noted the following additional issues:

- The Council needs to take a balanced approach to a revised smoking policy, with a consistent approach to employee health issues more generally.
- The draft regulations do not adequately deal with employees being exposed to smoke in residents' homes.
- Consideration must be given to employees who are not permitted to leave their work site for operational reasons, those on 'sleep-over' or '24 hour' shifts, and any employees that do not have formal breaks during their working day.

- The cost of smoking calculation in the Scrutiny reports is considered to be spurious.
- That the GMB requested that historical paid smoking breaks are kept, as these "historical rights" will disappear over time when employees (who have these rights) leave or retire.