

**UPDATE OF COUNCIL'S NO SMOKING POLICY**

**REPORT OF CORPORATE DIRECTOR RESOURCES**

**AGENDA ITEM: 4**

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**PORTFOLIO: CORPORATE SERVICES AND PERFORMANCE  
(COUNCILLOR GRAHAM HINCHEY)**

**Reason for this Report**

1. There is a need to update the Council's No Smoking policy to reflect changes in case law and to clarify the agreed approach to be taken in relation to the use of e-cigarettes. The opportunity is also being taken to rebrand the document as a Smoke Free Policy to better reflect the focus now being taken by employers.

**Background**

2. The Council's No Smoking Policy was developed some years ago in consultation with service areas and Trade Unions. In light of evolving case law and guidance provided by various bodies such as the British Medical Association and Public Health Wales, the policy needed to be updated to reflect such issues, including the emergence and increasing usage of e-cigarettes.
3. Whilst the Smoke Free Premises etc (Wales) Regulations 2007 prohibition on smoking conventional cigarettes in enclosed workplaces is well embedded, the growing availability and use of e-cigarettes has been the subject of much media attention. Evolving case law has meant that employers must make sure their policies are transparent and that there is clarity on the stance being taken on this contentious health issue.

**Use of e-cigarettes**

4. Electronic cigarettes (e-cigarettes) look very similar to regular cigarettes and different manufacturers use different designs and incorporate a range of ingredients. Manufacturers' advertising of e-cigarettes focuses on them being substitutes for cigarettes and they are often marketed as an aid to stop smoking. However employers must also consider the effects on other members of staff as the long term effects of e-cigarettes are unknown, plus having e-cigarette vapours in the workplace may create an unpleasant environment. They usually heat nicotine, propylene

glycol and flavouring agents into a vapour which the user inhales. E-cigarette manufacturers also promote the idea that using these products – ‘vaping’ as it is sometimes called - does not have the same harmful effects as conventional smoking.

5. E-cigarettes have not been subjected to many independent tests and any impact on health arising from their use may not become obvious for some years. Public Health England recently endorsed the use of e-cigarettes as an aid to help quit smoking. However it is advised that in light of Public Health England’s endorsement of the safety and efficacy of e-cigarettes being based on uncertain evidence, public health strategies should follow the precautionary principle (i.e. treating e-cigarettes the same as tobacco cigarettes) until better evidence is available. This is to limit second hand exposure to the vapour exhaled by the user and to ensure their use does not undermine smoking prevention and cessation by reinforcing the normalcy of cigarettes use.
6. The main aims of this updated and rebranded policy attached as Appendix 1 are to:
  - Protect all staff from the harmful effects of second hand tobacco smoke including the rights of non-smokers to breathe air that is free from tobacco smoke.
  - Ensure compliance with all legislation relating to smoking in the workplace.
  - Clarify the approach to be taken towards the use of e-cigarettes.
  - Clarify arrangements for smoking breaks for those who wish to smoke.
  - Signpost the support available for those who wish to stop smoking.
  - Ensure that all parties including employers, smokers and non-smokers have a clear understanding of their rights and responsibilities and prevent problems arising.

### **Other Changes**

7. Whilst the inclusion of e cigarettes is the major change to the policy, the opportunity is being taken to make sure that everyone understands that smoking (whether using a conventional or an e-cigarette) continues to be prohibited in relation to:
  - Occasions where employees are carrying passengers including young people
  - Council owned or leased vehicles including pool cars
  - all school grounds including playing fields, car parks, etc.

- those working with or near children and young people as smoking in sight of or the vicinity of such individuals could have the potential to normalise smoking.

### **Reason for Recommendations**

8. There is a need to update the current no smoking policy to reflect evolving case law and growing use and availability of e-cigarettes. The opportunity is also being taken to rebrand the policy as Smoke Free Policy to better reflect the overall ethos and approach now being taken by employers.

### **Financial Implications**

9. There are no direct financial implications arising from this report.

### **Legal Implications**

10. The legal implications appear in the text of this Report

### **HR Implications**

11. The proposed changes to this policy reflect evolving case law, with the main addition being clarity on the Council's approach towards the use of e-cigarettes. The Trade Unions have been consulted and support the changes proposed.

## **RECOMMENDATIONS**

Cabinet is recommended to agree:

1. The changes to the policy and rebranding as Smoke Free policy (attached as Appendix 1) be approved.
2. that the revised policy be commended to School Governing Bodies for adoption.
3. that the revised policy be brought to the attention of all employees, elected members, visitors, contractors, etc. by relevant means.

### **CHRISTINE SALTER**

Corporate Director

6 November 2015

*The following appendices are attached:*

Appendix 1: Council's Smoke Free Policy



## SMOKE FREE POLICY

<b>DATE DOCUMENT PUBLISHED</b>	
<b>APPROVED BY</b>	
<b>APPROVAL DATE</b>	
<b>DOCUMENT OWNER</b>	<b>Employee Relations</b>
<b>DATE FOR REVIEW</b>	

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## **SECTION 1 - INTRODUCTION, ROLES and RESPONSIBILITIES**

### **1.1 Introduction**

The City of Cardiff Council is committed to promoting health and wellbeing and, as a good employer, wishes to create a high quality, healthy and safe working environment for employees, service users and visitors. Smoking and passive smoking (breathing other people's tobacco smoke) has been medically proven to cause lung cancer and heart disease, as well as many other illnesses and minor conditions. The Council must, therefore, ensure that everyone is protected from the dangers of smoke in work and rest areas. For clarity, the arrangements of the Smoke Free Policy apply to the use of substitute smoking materials, such as e-cigarettes in addition to conventional tobacco cigarettes.

### **1.2 Roles and Responsibilities**

It is important that everyone clearly understands their roles and responsibilities with regard to the policy.

### **1.3 Employee responsibilities:**

- a) To take reasonable care for the health and safety of themselves and others and to co-operate with the Council as far as is necessary to enable the Council to comply with the requirements of the Health and Safety at Work etc. Act 1974.
- b) Ensuring they understand and comply with this policy and procedure.
- c) To adhere to and facilitate the implementation of the policy.
- d) Ensuring that all those who enter any Council premises are made aware of the policy.
- e) Ensure that they only smoke in their own time.

### **1.4 Management Responsibilities:**

In addition to their responsibilities as employees, managers are also responsible for:

- a) Ensuring employees are aware of the policy and procedures and statutory requirements behind the policy by whatever means are most appropriate.
- b) Fully understanding the Council's Smoke Free Policy and ensuring it is implemented, fairly and consistently.
- c) Ensure that employees are not smoking during their designated working hours.

### **1.5 HR People Services responsibilities:**

- a) Provide all employees with information and advice as appropriate.
- b) Will ensure that this policy forms part of the induction package for new employees.
- c) Review the application of the policy in the light of operational experience.

## SECTION 2 - POLICY

### Purpose

- 2.1 This policy has been developed by the Council to protect all employees, service users, customers and visitors from exposure to second hand smoke. This assists compliance with the Health Act 2006 in which all enclosed and substantially enclosed workplaces and public places are legally required to be smoke free. Whilst the policy is a constructive means of meeting the needs of non smokers to work in a smoke free environment, it is, at the same time, to be an encouragement to smokers to cease smoking
- 2.2 In addition ,The Smoke-free Premises etc. (Wales) Regulations 2007 make provision concerning the prohibition of smoking in certain wholly or substantially enclosed public places. It is an offence to smoke in no smoking premises or to knowingly permit smoking in no smoking premises. Vehicles used for business purposes are also covered by the law. Smoking is not allowed in any Council owned/leased or pool vehicle. Owners of premises and individuals will have to pay substantial statutory fines if this legislation is breached.
- 2.3 This policy clarifies the Council's stance on e-cigarettes.

### Who is covered?

- 2.4 This policy applies to all employees, elected members, contractors, customers, service users and visitors. It is commended to Governing Bodies with the recommendation that the policy is adopted in all Cardiff Schools.

### Key Principles

- 2.5 Smoking is prohibited in all Council owned/leased buildings. Whilst legislation does not require provision for smokers, designated smoking areas may be provided and must be located so smoke cannot drift into buildings. Where no designated smoking areas are provided, smokers should refrain from smoking outside door entrances, windows and ventilation fans which have the potential to allow smoke to drift back into offices / workplaces. Any debris associated with smoking should be placed in the receptacles provided.

### Exemptions

- 2.6 The only exemptions to the policy are as follows:
- (a) Sheltered and homeless hostel accommodation.



All persons are prohibited from smoking in any communal areas within sheltered or hostel accommodation, including: lounge areas, laundry, corridors, entrance halls/porches etc. However as sheltered and hostel accommodation units are people's homes, there are allowed to smoke in their own unit.

(b) Tied Accommodation

Employees who live in tied accommodation, e.g. school caretakers, will be permitted to smoke in their own exclusive accommodation as this is their home.

## SECTION 3 – PROCEDURE

### Signage

- 3.1 **NO SMOKING** signage as appropriate and posters will be displayed at all entrance of buildings owned/leased by the Council, and in all Council owned/leased vehicles including pool cars to inform everyone of the legislative requirements and the Smoke Free Policy. This is in compliance with The Smoke - free Premises etc, (Wales) Regulations 2007.

### Distribution of Policy

- 3.2 A copy of this policy will be available in all buildings and on the Council's intranet. Visitors and the general public will be expected to abide by the terms of this policy. Receptionists/persons greeting visitors will inform them, if necessary, of the Council's Smoke Free Policy and The Smoke-free Premises etc. (Wales) Regulations 2007. Those with responsibility for the booking of committee rooms and other Council facilities have a responsibility to inform those seeking to book the rooms/facility that they are smoke free.

### Vehicles

- 3.3 Smoking is prohibited in all Council owned/leased or pool vehicles and in private vehicles if a non smoking passenger is being carried for work purposes. In addition it is against the law to smoke in a vehicle carrying children under the age of 18.

### Domestic Premises

- 3.4 Employees required to visit premises not covered by smoke free legislation as part of their duties (i.e. domestic premises) should advise the person being visited, when arranging a visit, of the Council's Smoke Free Policy. Although the Council has a duty of care to protect its employees, it cannot enforce the Smoke Free Policy in domestic premises. Employees should agree with the person they are visiting, that a non-smoking area be provided for the duration of the visit. Where this is not possible, employees should ask the person being visited to refrain from smoking inside the premises, or in the meeting area/site, for one hour before the visit and for the duration of the visit.
- 3.5 In circumstances where it is not possible to pre-arrange a visit and it is subsequently found that Council employees are being exposed to second-hand smoke, employees should consider, and decide on an individual basis, whether they wish to proceed with the visit and be exposed to second hand smoke. Managers should be informed of these circumstances. There will remain a risk to employees who support service users who are smokers. However, the Council needs to demonstrate that it has done everything it reasonably can to reduce the

risk, without affecting the clients rights while they are within their own home

### **Staff Required to Sleep-In**

- 3.6 Practical and agreed arrangements will need to be put in place to safeguard employees who are required to sleep in as part of their contractual requirements whilst the needs of the relevant service user are met. In these situations staff are not permitted to smoke on the premises nor smoke with or in front of service users

### **Local Authority owned/run school sites**

- 3.7 Smoking is **not** permitted in school premises or on school grounds, including playing fields and car parks under the control of the school, or is managed as part of the school.

### **Other areas frequented by young people or families**

- 3.8 Employees of the Council who work with, or near, children and young persons as part of their employment, must refrain from smoking in sight of and in the vicinity of such individuals whilst engaging in work related activities or duties. Smoking in these circumstances can have the potential to "normalise" smoking, which may have a subsequent negative influence on the behaviour of these young people with a greater likelihood of them trying tobacco products.

### **Sale of Tobacco Products**

- 3.9 The sale and advertising of tobacco and e-cigarette products is **prohibited** in all Council premises.

### **Electronic Cigarettes (e-cigarettes)**

- 3.10 E-cigarettes, personal vaporizers (PVs), and electronic nicotine delivery systems (ENDS) are battery operated devices that mimic tobacco smoking and are often used as a replacement for cigarettes. Following current guidance from the British Medical Association and in accordance with current Public Health Wales advice, the use of substitute smoking materials, such as these, are not permitted in any Council premises. The arrangements of the Smoke Free Policy apply to the use of such materials. Employees using such products are free to use designated smoking areas if they wish, or to use other suitable areas outside of and away from Council buildings. The charging of e-cigarettes and related products are not allowed in Council workplace. Any reference to smoking within this policy also includes the use of e-cigarettes.

## **Smoking Breaks**

- 3.11 On the grounds of equality and fairness towards smokers and non-smokers, all employees who stop work and leave their workstation in order to have a smoke or e-cigarette break must do so in their own time as part of the Council's flexible working arrangements and with the permission of their line manager. Employees must therefore clock out/in for a smoking break. Failure to do so will lead to disciplinary action.
- 3.12 Should the frequency and duration of these breaks become excessive, to the point of adversely affecting service delivery, managers will be expected to discuss this with the individual concerned and may place restrictions on the number of breaks.
- 3.13 Employees not on flexitime who wish to smoke during the working day may do so only during designated breaks, i.e. an official agreed rest period, such as the lunch break or, where possible with the prior agreement of their line manager.

## **Breaches of the Policy**

- 3.14 Breaches of / non-compliance with this policy will be viewed as a serious matter. Employees who wilfully disregard the Smoke Free Policy may be subject to disciplinary action, including dismissal in cases of persistent wilful disregard. Elected Members who breach or do not comply with this policy may be treated in accordance with the Members Code of Conduct.
- 3.15 It is a criminal offence to smoke in a designated smoke free public area and to do so can attract a fine.

## **Visitors to Council Premises**

- 3.16 Where individuals who are not employed by the Council, are noted to be smoking or using e-cigarettes within smoke free buildings (as described in the Smoke - free Premises etc. (Wales) Regulations 2007, the following steps are recommended to be taken in accordance with information provided by the Welsh Government.
- a) Draw the person's attention to the 'No Smoking' signs and remind them that they are committing an offence.
  - b) Politely ask them to stop smoking.
  - c) If relevant, advise the person that it is also an offence for you (as manager etc.) to let anyone smoke.
  - d) Explain to them that the Council has a Smoke Free Policy to ensure a safe working environment for all staff and customers.
  - e) If your warning is ignored, immediately ask them to leave the premises (and, where relevant, inform them where they can smoke).

- f) If the person refuses, implement your normal procedure for anti-social/illegal behaviour in the workplace
- g) Maintain a record of all such incidents and outcomes with name and address of the individual where possible.
- h) Inform the Council's Health Improvement Team of the breach, in order to allow them to investigate and implement formal action. The Improvement Team must be provided with a written statement with details of the incident including names, etc.

### **Contractors**

3.17 The Smoke Free Policy applies to contractors engaged by the Council. Breach of the policy will be dealt with under contract terms and conditions which may lead to termination of the contract.

## SECTION 4 – HELP TO STOP SMOKING

The following sources of support are available for smokers who wish to stop.

**Smokers Helpline Wales** - Free phone - 0800 169 0 169.

**All Wales Smoking Cessation Service** -Free phone- 0800 085 2219.

The All Wales Smoking Cessation Service is a national service available to smokers and others who would like advice to quit smoking. Just phone to find out where your local stop smoking service is based and information on how to join your local support group to help you give-up smoking.

**ASH** (Action on Smoking and Health) - [www.ash.org.uk](http://www.ash.org.uk)

**NHS Direct**- [www.nhsdirect.nhs.uk](http://www.nhsdirect.nhs.uk)

**NHS Helpline** — [www.givingupsmoking.co.uk](http://www.givingupsmoking.co.uk)

**QUIT** [www.quit.org.uk](http://www.quit.org.uk) Tel 0800 00 22 00

**British Heart Foundation** — Smoking [www.bhf.org.uk/Smoking](http://www.bhf.org.uk/Smoking)

## SECTION 5 - REVIEW

The policy will be reviewed in the light of operational experience or when legislative changes occur.