



Waverley Council

No Smoking Policy

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1 Introduction

In 1990, Council developed a workplace smoking policy on the basis that smoking in the workplace is a health hazard for employees and is therefore an OH&S issue. This policy was developed in consultation with employees and involved implementation in three stages. It was recognised that support should be given to those staff who wanted to have a smoke-free environment and for staff who wanted to give up smoking. As a result quit smoking courses by Smoke Enders were offered to staff who wished to quit smoking and designated smoking areas were introduced.

In the mid-1990s a growing awareness that passive smoking could harm the health of non-smokers led to the wide spread adoption of smoke-free policies in workplaces and public places. The majority of workplaces in NSW including all Federal and NSW Government departments and most private companies have now adopted smoke free policies.

1.1 What is Passive Smoking?

Passive smoking means to involuntarily inhale (breathe in) other people's tobacco smoke. Tobacco smoke is a combination of exhaled mainstream smoke and sidestream smoke.

- Mainstream smoke is the smoke that smokers inhale directly from their cigarette. Exhaled mainstream is the smoke that smokers exhale.
- Sidestream smoke is emitted directly from burning tobacco and contains much higher levels of carcinogens and other toxic substances than exhaled mainstream smoke.

The degree of exposure to tobacco smoke by non-smokers is determined by factors such as proximity to a smoker, the tar level of the cigarettes, the number of cigarettes smoked, the degree of enclosure (eg room size) and duration of exposure.

Sidestream smoke is considered to be more harmful than mainstream smoke as a person is taking unfiltered smoke into their lungs.

1.2 Health Effects

During the past two decades a number of major scientific reports have been conducted on the health effects of passive smoking. These reports have concluded that passive smoking is a significant health hazard.

Tobacco smoke contains over 4,000 chemical compounds including 43 known carcinogens. Tobacco smoke is an irritant to the eyes and respiratory tract and to many people has an offensive odour. It may trigger, increase the chance of contracting and/or aggravate a range of illnesses including:

- Cardio-vascular disease
- Lung cancer
- Asthma
- Acute irritation of the respiratory tract
- Bronchitis, pneumonia and other chest infections
- Allergic reactions affecting eye nose throat and respiratory systems.

The higher level of exposure to tobacco smoke the greater the risk of contracting these illnesses.

Exposure to tobacco smoke concurrent with other hazards such as cement dust, can increase the risk of lung cancer.

2 Legislation And Legal Liabilities

2.1 OH&S Act

Tobacco smoke is a major airborne contaminant and employers who continue to allow smoking in the workplace may be liable for prosecution under the Occupational Health and Safety Act 1983. The Act requires: (amongst other things)

- Employers to ensure the health, safety and welfare at work of all their employees and others at a place of work.
- Employers to take all practical measures to protect workers in relation to their health, safety and welfare.
- Employees to take reasonable care for the health and safety of persons at their place of work who may be affected by their acts.
- Employees not to interfere with or misuse things provided for health, safety and welfare.

2.1.1 Breach Of OH&S Act

Currently, the maximum penalties that can be imposed for breaches of the Act are \$550,000 for corporations (\$825,000 and two years imprisonment for repeat offenders), \$55,000 for individual employers and up to \$3,300 for employees. Employers may also be liable under common law.

Under the provisions of the Occupational Health & Safety Act (Inspectors' Notices and penalty Notices) Regulation 1988, breaches of safety requirements including Council's safety policies, can attract on-the-spot fines for non-compliance by the Employer and Employee. The fines for employees are currently up to \$3 300.

Prohibition Notices and Improvement Notices can also be imposed on the Employer under this regulation.

2.2 Workers Compensation Act

Under the Workers Compensation Act 1987 workers may be entitled to compensation if it is found that passive smoking has contributed to the development of a disease or aggravated an existing disease. Since 1985 there have been over twenty cases where employers have been successfully sued in relation to passive smoking, either for diseases directly related to passive smoking such as lung cancer or medical conditions exacerbated by smoke such as asthma.

2.3 Protection of Environmental Operations (Littering) Act

The Protection of the Environmental Operations Amendment (Littering) Act 2000 provides penalties for littering that are relevant to smoking, these currently include:

- littering of small items such as cigarette butts incur a \$60 on the spot fine for individuals and \$400 for corporations.
- littering of a lit cigarette can incur a \$200 on the spot fine.

Local Government is the appropriate regulatory Authority and any authorised officer in council can issue a fine for this type of offence.

3 No Smoking Policy

3.1 Smoking Restricted Areas

Smoking is not permitted in Council vehicles, on or near items of plant, in hazardous areas and in Council occupied buildings, yards and workplaces, except in designated smoking areas. Smokers are not to congregate around entrances and exits of Council premises. **Smoking in or near Council premises is only allowed within designated smoking areas.** (A list of designated smoking areas is provided in *Schedule 1*).

3.1.1 Council Vehicles in Private Use

Staff subject to leaseback vehicle arrangements or other arrangements allowing private use of a Council vehicle are not permitted to smoke in this vehicle during private use. Staff must also ensure that there is no smoking in a Council vehicle by family members or other people who may drive or be a passenger in a Council leaseback vehicle. Council will not be held responsible for any incident or claim that arises from smoking during private use of a Council vehicle. These vehicles are pool vehicles when at work and other employees are required to use them. The no smoking policy applies to all Council vehicles even when they are in private use as subsequent users may suffer allergic reactions.

3.1.2 Hazardous Areas

Hazardous areas include, but are not limited to, ride on mowers, operating conveyances and/or items of plant, areas of high risk such as in the vicinity of hazardous or flammable substances or dangerous goods, or whilst undertaking any activity that requires concentration.

3.1.3 Outdoor Workplace

An outdoor workplace shall be defined as an area within ten (10) metres of another staff member or member of the public. This also included 10 metres from any opening into a building or air conditioning duct.

3.1.4 Leased Premises

Council premises that are leased by other organisations may not be subject to this policy. Affected staff should refer to the conditions of the lease if they are uncertain whether Council's No Smoking Policy applies. Residents of Council owned properties are excluded from this policy.

Any Council business or work premises that are leased from other organisations will be designated non-smoking areas.

3.2 Smoking During Working Hours

No smoking is permitted during working hours, except in the following limited circumstances, and only if smoking does not occur in restricted areas.

- Staff who have *nominated tea breaks and lunch times* may smoke during these designated breaks.
- Staff may smoke during *work pauses* provided they recommence work as soon as other staff recommence work (eg. a work pause may occur when staff are *walking* from one work site to the next).
- Staff who do not have an entitlement under an Award or Enterprise Agreement to a *nominated tea break*, but who would normally *pause* their work to have a drink (eg. tea or coffee), may use this pause time for a smoke break provided that the time taken for smoke breaks does not exceed 20 minutes per day. Staff who do not have nominated tea breaks must make up any time lost due to smoke breaks at the end of the day. Time worked to compensate for smoking shall not be counted as time accrued towards a flexi-day or rostered day off. Staff should understand that smoke breaks are a privilege not an entitlement.
- In some circumstances, where the *type of work undertaken permits*, managers may exercise their discretion to allow staff to take work to a designated smoking area and continue working. For example, a staff member may be able to proof-read and notate corrections to a document while smoking. This will only be appropriate for staff who are not required to be available at their work area to deal with customers.
- Staff working under a *task system* may pause work for a smoke break provided work does not cease for more than 20 minutes a day. Where staff working a task system work in a team, the pause for a smoke break must be negotiated with the work team. If a vehicle needs to be parked for a smoke break to occur, the vehicle must be parked in a safe place, eg. not a hazard to other traffic and safe for staff to leave and return.

Under no circumstances is an employee or other person (eg. a non smoker) to be disadvantaged and be placed in a position where they inhale sidestream smoke against their wishes.

3.3 No Exceptions

WorkCover and the NSW Department of Industrial Relations both clearly state that:

- even if all smokers in a work area want to smoke that this should not be allowed as it would contravene Council's obligation as an employer to provide a safe place of work.
- those who work in isolation should be prohibited from smoking, as the smoke may still affect others.

4 Responsibilities

4.1 Staff Responsibilities

4.1.1 Reasonable Care

Staff have an obligation to take reasonable care for the health and safety of themselves and other people who are at their place of work and who may be affected by passive smoking. Staff may smoke in designated areas only (*Schedule 1*).

4.1.2 Co-operation & Consideration

Staff who do not smoke are expected to show consideration for those who do, eg. by allowing them appropriate space and distance to smoke when outdoors. Staff who smoke should respond promptly to requests from other staff or members of the public who may request they stop smoking in the vicinity.

4.1.3 Freedom From Harassment & Victimisation

All staff are responsible for ensuring that staff who request others to stop smoking or who report breaches of these guidelines are not to be victimised or harassed in any way.

4.1.4 Issue of Fines

Staff are advised that Council Rangers have responsibility under the Protection of the Environment (Operations) Act to issue fines for Littering offences, including littering involving cigarette butts, matches, etc. Staff should be aware that if a Council Ranger issues a fine under this Act for littering involving cigarettes, it is not appropriate for the employee to question or debate the issue of the fine with the Ranger. Any complaints or queries regarding fines issued to employees for this should be referred to the Director of Planning and Environmental Services. Council Rangers should advise the supervisor of any staff member issued a fine for this while the employee is on duty.

4.1.5 Discipline

Staff are expected to comply with these guidelines, any breach of this policy may lead to:

- failure of performance assessment, in particular the OH&S & Risk Management performance criteria
- disciplinary action under the Award, which may include but is not limited to suspension without pay, demotion or termination. (In cases of serious misconduct, termination may occur without warning.)
- a fine under the relevant legislation or Award.

4.1.6 Compliance with Guidelines

If a staff member disagrees with their supervisor's directions or instructions relating to implementation of these guidelines, they should follow the direction. The disagreement should then be dealt with under the grievance procedures of the Award. The only circumstances in which it may be appropriate to refuse to follow a direction is if following the direction would put the employee's health and safety or that of another person at risk.

4.2 Supervisor/Manager Responsibilities

4.2.1 Reasonable Care

Supervisors and managers are responsible for taking all practicable measures to protect the health, safety and welfare of employees in the workplace.

4.2.2 Managing Compliance & Discipline

Supervisors/managers have a responsibility to:

- ensure that staff comply with these guidelines
- monitor productivity and ensure that any smoking breaks are limited in duration and frequency

- ensure that requests to stop smoking are complied with and that no staff member is victimised or harassed for requesting that smoking in a work area cease.
- counsel and discipline staff who do not comply with this policy.

A range of tools can be used to assist the performance management process, eg. Performance Records to keep a record of incidents, Performance Improvement Notice to provide initial clarification of performance standards and notification of unsatisfactory performance, formal warnings under the Award disciplinary provisions. Examples of these tools have previously been published in Council's Sun Protection Guidelines and are available from Employee Services or on Waverley Controlled Documents on Lotus Notes.

Supervisors and managers should be aware that if they do not manage and enforce this policy they themselves may be subject to disciplinary actions. This may include failure of their performance assessment, in particular against the Leadership and Management performance criteria.

4.2.3 Performance Management And Discipline

Supervisors and managers must report any staff who fail to comply with these guidelines to their Director. The supervisor, in consultation with their manager, should initiate appropriate performance management action in keeping with the disciplinary provisions of the Award.

5 Quit Smoking Support

5.1 Quit Smoking Providers and Information

In order to support staff who wish to give up smoking, and consequently to improve or maintain their health and the quality of their performance at work, Council encourages employees to attend structured quit smoking programs, which provide counselling services. Counselling services include seminars, help lines and similar forms of support.

A list of suitable quit smoking programs and providers will be kept by the Risk Manager and Quit Smoking programs will be advertised in Pipeline.

Some organisations that can assist staff who wish to quit smoking, often for no charge, are:

- | | |
|--|-----------|
| ▪ The Quit Line | 131 848 |
| ▪ NSW Cancer Council | 9334 1900 |
| ▪ The National Heart Foundation | 9219 2444 |
| ▪ NSW Health Department, Tobacco & Health Unit | 9391 9111 |

5.2 Reimbursement of Fees

Council will reimburse up to 50% of the fees for a recognised Quit Smoking program (or other appropriate programs) for any staff member who can demonstrate that they have remained successful non-smokers for at least three months after their attendance at the program. The maximum amount to be reimbursed is \$500 (ie., Council will reimburse 50% of the fees or \$500, whichever is the lesser). Staff may qualify for reimbursement for one course only. In order to receive reimbursement the staff member must provide a copy of the receipt for the program and a statutory declaration stating that they have not smoked for 3 months since completing it. A recognised program is a program supported or recommended

by one of the organisations listed at 5.1 or by the Commonwealth or NSW Department of Health. The Risk Manager will determine whether the meets the requirements of Section 5.1.

5.3 Reporting of Reimbursements

Any amounts reimbursed under this policy must be reported to Council's Taxation Manager to ensure compliance with any taxation requirements, including FBT and GST. Information must include details of the counselling program and any GST paid.

6 Communicating Our No-Smoking Policy

6.1 Information Provision

Information on our No-Smoking Policy will be provided to all staff through Council's General Induction, in job advertisements, letters of offer, annual articles in Pipeline and in team meetings. Language aides and/or interpreters may be used as necessary to inform relevant staff of our No-Smoking Policy.

6.2 No Smoking Signage

No smoking signs will be posted in appropriate places to remind staff and visitors to our premises.

7 Review Of Guidelines

Council reserves the right to review and vary these guidelines at any time. If the guidelines are revised, staff will be informed of any changes.

8 References

References and sources used to develop this policy include:

- NSW DIR Website – 'Smoking in the Workplace'
- WorkCover, NSW Health and Safety Guide, Passive Smoking – Policy & Control
- National Occupational Health and Safety Commission – Guidance Note in Passive Smoking in the Workplace
- www.heartfoundation.com.au

9 Schedule 1 -Designated Smoking Areas

9.1 Requirements for Designated Smoking Areas

Designated workplace smoking areas must not contribute to passive smoking of others and **must be outdoors** away from work activities and with no possibility of contamination of indoor areas. There must be a suitable distance (at least 10 metres) from building air intake vents, windows and doors so that smoke is not drawn into building ventilation systems or work spaces. The area must have clear signage indicating that it is a designated smoking area and facilities for rubbish (ie. cigarette butts) must be provided.

It is the responsibility of the smokers and the manager of this specific facility to ensure its cleanness. Inspections of designated smoking areas will be undertaken and non compliance will result in the removal of this area.

9.2 List of Designated Smoking Areas

The OH&S Committee in consultation with staff has developed the following list of designated smoking areas.

Council Chambers

- 3rd floor - on balcony at least 10 metres to the right of the Kitchen Room – some cover is available (The doors to the Middle and Beach Rooms must remain closed).

Waverley Oval Pavilion

- At the very top of the grandstand under the cover of the roof.

Mill Hill Centre

- Ground level – under the covered walkway at least 10 metres beyond the rear entrance of the building

Waterloo Depot

- Covered area at the northern end of the Health and Building change room and ladies change room
- On the northern side of the Mechanics' workshop, adjacent to the police yard. (This area is not covered and activities are not to interfere with though traffic travelling down the lane.)

Library

- There is no designated smoking area for the Library. Library staff, if smoking, must smoke at least 10 metres away from the building and any non-smoking employee or member(s) of the public. Smoking is not permitted in the Library car park.

Bondi Pavilion

- There is no designated smoking area for the Pavilion. Pavilion staff, if smoking, must smoke at least 10 metres away from the building and any non-smoking employee or member(s) of the public.

Waverley Works

- Back Courtyard 10 metres away from building or opening into building (approved by WorkCover December 2000) A separate area for non smokers to have tea/coffee has been created to avoid passive smoking.

Gardiner Childcare Centre, Bronte Childcare Centre, Waverley Childcare Centre, Family Day Care, Tamarama Beach, Bronte Beach, Arts Building.

- Staff will be able to smoke outside these Council buildings provided it is ten metres away from buildings and/or a non-smoker.

Other Work Locations

Any staff who work outdoors must smoke at least 10 metres away from any non-smoking employee, plant or equipment, building or air conditioning inlet duct or member(s) of the public.