

13.1 NOTICE OF MOTION - CR JONATHAN HALLETT - PLANNING FRAMEWORK REVIEW REGARDING TOBACCO OUTLETS

TRIM Ref: D21/82373

Attachments: Nil

That Council:

1. NOTES that:

- 1.1 31 May is *World No Tobacco Day* which is held annually to inform the public on the dangers of using tobacco, the business practices of tobacco companies, what the World Health Organization is doing to fight the tobacco epidemic, and what people around the world can do to claim their right to health and healthy living and to protect future generations;
- 1.2 the promotion of tobacco use is inconsistent with the intent of the City of Vincent Public Health Plan 2020-2025, the State Government's Sustainable Health Review 2019, Western Australian Health Promotion Strategic Framework 2017-2021 and State Public Health Plan 2019-2024, the Federal Government's National Drug Strategy 2017–2026 and Draft National Preventive Health Strategy, and the *WHO Framework Convention on Tobacco Control* of which Australia is a signatory; and

2. REQUESTS the:

- 2.1 the Chief Executive Officer provide a report to Council by 31 October 2021 outlining options for changes to the planning framework-an amendment to the City of Vincent Local Planning Scheme No. 2 to explicitly list smoking/cigar rooms, tobacconists, and other outlets whose primary purpose of the premises is where tobacco and other products to be used for smoking are offered for sale or consumed as ~~X~~ uses that are not permitted by the Scheme for in future developments; and
- 2.2 the Chief Executive Officer/Mayor advocate to the WA Departments of Health and Planning/Ministers for Health and Planning to instigate measures that reduce the number of outlets whose primary purpose of the premises is where tobacco and other products to be used for smoking are offered for sale or consumed.

REASON**Tobacco harms and regulation**

Tobacco smoking has a substantial negative impact on Western Australians, not only in terms of the estimated 1500 deaths attributed each year and \$60 million cost to the hospital system alone, but also for adults and children who suffer the effects of environmental tobacco smoke also called second-hand smoke (Collins and Lapsley, 2008; VicHealth Centre for Tobacco Control, 2002). The harms to health from second-hand smoke are similar to those for smokers and among adults include cancers, stroke and heart disease, while among children include ear, eye and nasal irritations, worsening asthma and a range of respiratory effects (VicHealth Centre for Tobacco Control, 2002; Government of Western Australia Department of Health, 2008). Waterpipe tobacco smoke contains many of the same toxic substances as cigarette smoking and is associated with some cancers, lung disease, respiratory diseases and cardiovascular disease (Waziry et al. 2017; WHO, 2015). The level of air pollutants present in second-hand smoke from waterpipe tobacco use is comparable to that produced by cigarettes, thus associated with similar health effects from exposure (Kumar et al. 2015). While only 4% of current smokers in Australia use waterpipe tobacco, this method of smoking has increased in popularity in recent years (AIHW 2020; Waziry et al 2017).

Continued tobacco control efforts since the 1960s, aided by mounting evidence and public support, has seen Western Australia's smoking prevalence fall dramatically, with an estimated 18% of adults being current smokers in 2012 (National Health Performance Authority, 2013). Legislative measures resulting in the high price of cigarettes, ban of tobacco advertising, mandated warnings on packaging and prohibition of smoking in a range of settings have been instrumental to this success and subsequent health gains (Cancer Council

WA, 2008; Swanson & Durston, 2011). In essence, tobacco smoking has been de-normalised and support for further anti-smoking measures has risen (Scollo & Winstanley 2012). Yet, despite significant progress, smoking remains Australia's leading cause of death and disability (Preventative Health Taskforce, 2009).

Responsibility for tobacco control legislation in Australia lies with the individual states/territories (with the exception of buses, trains and airports) and therefore lacks uniformity on a national level, particularly in relation to smoke-free areas (Scollo & Winstanley 2012). Local governments also have powers to create local laws pertaining to smoking (Government of Western Australia, 1996). In Western Australia, the *Tobacco Products Control Act 2006* placed restrictions on the sale, supply and promotion of tobacco products, with additional regulations annexed to the Act that restricted smoking in certain areas (Government of Western Australia, 2006). The City of Vincent, among other local governments also, around this time, placed restrictions on smoking in outdoor dining and public areas within their jurisdictions (Scollo & Winstanley 2012).

Limiting tobacco outlet density

The *WHO Framework Convention on Tobacco Control* applies to all levels of government. The potential for density of tobacco outlets to be restricted in a similar way to alcohol outlets has been identified and advocated for in some jurisdictions. It has been demonstrated both in Australia and elsewhere that lower density of alcohol outlets is associated with lower levels of alcohol-related harm (Kavanagh et al. 2011; Campbell et al. 2009; Popova et al. 2009). The link between density of tobacco outlets and smoking behaviours has also been substantiated, including concentration around schools being associated with increased likelihood of purchases by underage smokers and higher smoking rates (US Department of Health and Human Services, 2012; Leatherdale & Strath, 2007). Research has also demonstrated that tobacco advertising increases rates of youth smoking (Di Franza et al. 2006; Lovato et al. 2003). Several studies have highlighted the susceptibility of young people to marketing messages, images and portrayals of smoking (US Department of Health and Human Services, 2012). Zoning regulations are a tool for local government authorities to use in limiting the number of tobacco-related businesses, particularly around schools and places that young people frequent.

In Canada, Smoke-Free Ontario has identified zoning restrictions and retail density as potential avenues for decreasing tobacco availability in the province (Ontario Ministry of Health and Long-Term Care, 2018). In some Canadian provinces, tobacco sales are already prohibiting in some settings such as universities, schools and hospitals, while in some parts of the US and UAE, tobacco outlets are prohibited within a specified proximity of schools (Ontario Tobacco Research Unit, 2012). Attempts to reduce tobacco density in US communities have been made by San Francisco city council (via a licensing cap), New York State (via fee increases) and City of Buffalo (legislation including license cap, restricted sales locations, charging fee to manufacturers rather than retailers) and have faced enormous opposition from the tobacco industry through lobbying and litigation - actual or impending (Tilson, 2011).

Resources are increasingly available in the area of tobacco retailer density and planning. GIS mapping can be a useful planning tool for local government authorities and inform research. Such technology has been used for surveillance of tobacco retailer density by the City of Hamilton in Canada (Tilson, 2011). A 'Model Land Use Ordinance Regulating the Location and Operation of Tobacco Retailers' and accompanying checklist published by the California Technical Assistance Legal Center (TALC) may also provide guidance for local governments looking to amend zoning bylaws for tobacco control (Tilson, 2011).

Ashe et al. (2003) contended that "*largely unexplored by tobacco control advocates are the zoning tools used in alcohol control that could limit the location and number of tobacco retail outlets*". The above examples and recent trends suggest that zoning tools are now becoming a focus. Ashe et al (2003) further state that:

"Given that tobacco products produce a significant negative impact on the health and welfare of a community... it is reasonable— and certainly should meet the very low legal bar of being "rational"—for local governments to use their zoning powers to regulate the location of tobacco retailers. This government role is especially important in instances in which youth access is concerned."

The issue of the proximity of tobacco outlets to young people is key given that, young people are particularly influenced by exposure to images and messages glamourising smoking and to role modelling (US Department of Health and Human Services, 2012).

While not the subject of this Notice of Motion there is potential to go further to restrict sales in other retailers. Some have suggested that restricting sales of tobacco by small retail stores would unduly impact their

viability. However, a WA study found that 1) tobacco purchases were not a frequent reason for store visit cited by customers and 2) there was no difference between unplanned/impulse purchases at point of sale between those purchasing tobacco and other customers (Wood & Gazey, 2021).

Smoking bans and supporting smoke-free environments

In 2006, Healthway amended their policy to require of sponsored organisations that outdoor and viewing areas, ideally the entire event, be smoke-free (Cancer Council WA, 2008). Limiting the areas where smoking is permitted is an effective strategy for not only reducing passive smoking, but making smoking less visible and is also associated with reduced smoking rates (Government of Western Australia Department of Health, 2008; Pickett et al. 2006). In 2012 all Western Australian universities committed to Smoke-Free Campuses and in 2015 all Western Australian TAFEs followed suit (Australian Council on Smoking and Health, n.d.). The success of these smoking bans and the continued voluntary implementation of smoking bans in a variety of settings adds further evidence that smoke-free environments and tobacco control measures have strong public support in Western Australia.

Local government has a key role in tobacco control with the ability to designate smoke-free areas (i.e. council property, through lease/hire agreements, events etc), support community education and health lifestyle initiatives, contribute to social norms, offer smoking cessation programs to council employees, as well as advocate to State government (Cancer Council NSW, 2010; Mark et al., 2014). Local governments may elect to develop a specific tobacco council policy or integrate tobacco control strategies into other plans (South Metropolitan Population Health Unit, 2014). For example, The City of Armadale has implemented a 'Smoke Free Outdoor Policy' while the City of Cockburn has developed a Tobacco Action Plan (South Metropolitan Population Health Unit, 2014). The Local Government Association Tobacco Action Guide produced by Vic Health encourages local governments in "*expanding smoke-free areas to provide protection from second-hand tobacco smoke and contribute to the continued denormalisation of smoking*" and lists sporting fields, shopping precincts and events funded by council as potential settings (Vic Health, 2014). The City of Vincent's Public Health Plan has a priority action to establish Smoke-Free Town Centres which supports these aims.

Smoking establishments and 'private' clubs

Of particular relevance is the case of the Burswood Casino exemption for the International Room. The Review of the WA *Tobacco Products Control Act 2006* Final Report published in 2011 highlighted the significant opposition to this exemption being in effect (Government of Western Australia Department of Health, 2011). Reference was made to Safe Work Australia's 2003 'Guidance Note on the Elimination of Environmental Tobacco Smoke in the Workplace' which stated:

"...there is no safe level of exposure to ETS; given the health risks of environmental tobacco smoke, all Australian workplaces should be made completely smoke-free as soon as possible; and mechanical dilution ventilation is not an appropriate method for eliminating exposure to ETS for any given level of smoking." (as cited in Department of Health, 2011, p45).

Several WA local governments made submissions advocating for the exemption to be removed, pointing to the influence of 'big business', inequity, inconsistency and the undermining of smoking reduction measures as supporting reasons. (Government of Western Australia Department of Health, 2011).

Tobacco Products Control Act legislation was amended in 2010 to ban smoking in 'enclosed public spaces' based on solid evidence of detrimental health effects of second-hand smoke. While the intent of the legislation seems clear, the wording of the legislation exposed a potential loophole for spaces to be deemed 'private'. Meanwhile smoking restrictions already apply to 'private' spaces as in personal vehicles with children and pressure is mounting for smoking bans to be extended to residential strata property (Australian Council on Smoking and Health, 2014).

When private clubs attempted to exploit a similar loophole in the tobacco control legislation in Ontario, Canada in 2009, the Courts interpreted the legislation to definitively uphold the intent of the smoking restrictions and refute the attempted claim of exemption, concluding:

"Read as a whole, the Act is clearly designed to eliminate smoking in public places and thus protect members of the public from contact with second-hand smoke. The word "public" is not defined in the Act. There is no attempt to limit or restrict its application in any way. As I see it, people who join the club are as much members of the public as are members of a swimming club or tennis club." (Jaglowitz, C. 2009)

It was also contended that “if the legislature had intended to exempt private clubs from the application of the Act it would have done so” (Jaglowitz, C. 2009).

Ventilation is insufficient for mitigating the effects of environmental tobacco smoke (Cancer Council, 2018). The tobacco industry has advocated for ventilation as a solution over many years via influencing the development of ventilation Standards and attempts to dismiss the negative health effects of secondhand smoke by ‘discrediting proven science’ (i.e. by enlisting scientists and lobbyists, conducting research to contradict evidence) (Bialous & Glantz, 2002; Drope & Chapman, 2001; World Health Organization, 2012; World Health Organization & WHO Tobacco Free Initiative, 2008).

One example of this interference is the involvement of Philip Morris (PM) with Healthy Buildings International (HBI) whereby:

“HBI breached Standards Australia protocols in providing PM with confidential public submissions made to a review of the Australian standard on ventilation and acted as an undeclared cipher into the review for Philip Morris’s concerns, leading to the eventual dismissal of the HBI representative from the standards subcommittee”

(World Health Organization & WHO Tobacco Free Initiative, 2008p.iii107)

Conclusion

Ongoing strengthening of tobacco control legislation at federal and state level attests to the strong public support to ‘make smoking history’ in Australia. The local government authorities play a key role in supporting such policy. The City of Vincent places a strong emphasis on promoting health, is actively committed to reducing the impacts arising from tobacco use and this action would further support our current smoke-free stance. Furthermore, the aims of the Vincent Planning Scheme include: “(b) to protect and enhance the health, safety and general welfare of the City’s inhabitants and the social, environmental and cultural environment;” (Department of Planning, Lands and Heritage, 2018).

To maintain our leadership role in Western Australia and be a credible advocate for state-wide initiatives the City should amend our Planning Scheme to include smoking/cigar rooms, tobacconists, and other outlets whose primary purpose is the sale of tobacco and/or smoking implements as an excluded use for all future development and continue to expand smoke free spaces for the health benefit of the whole community.

References

- Ashe, M., Jernigan, D., Kline, R., & Galaz, R. (2003). Land use planning and the control of alcohol, tobacco, firearms, and fast food restaurants. *American Journal of Public Health*, 93(9), 1404-1408. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447982/pdf/0931404.pdf>
- Australian Council on Smoking and Health. (n.d.). *Tobacco legislation and policy timeline*. <https://www.acosh.org/law-policy/wa-tobacco-control-legislation/tobacco-legislation-and-policy-timeline/>
- Australian Council on Smoking and Health. (2014). Submission: Strata Titles Act Reform. Cancer Council WA, Heart Foundation.
- Australian Institute of Health and Welfare [AIHW]. (2020). *National Drug Strategy Household Survey 2019*. Cat. no. PHE 270. Canberra: AIHW. doi:10.25816/e42p-a447
- Bialous S & Glantz S. (2002). ASHRAE standard 62: tobacco industry’s influence over national ventilation standards. *Tobacco Control*. 11(4):315–28. Available from: <http://tobaccocontrol.bmj.com/cgi/content/abstract/11/4/315>
- Campbell, C. A., Hahn, R. A., Elder, R., Brewer, R., Chattopadhyay, S., Fielding, J., ... & Task Force on Community Preventive Services. (2009). The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms. *American journal of preventive medicine*, 37(6), 556-569.
- Cancer Council. (2018). Tobacco in Australia: 15.3 Opposition to and weakening of smokefree environment legislation. Retrieved from: <http://www.tobaccoinaustralia.org.au/chapter-15-smokefree-environment/15-3-opposition-to-and-weakening-of-smokefree-envi>
- Cancer Council NSW. (2010). *Local Government Reducing tobacco-related harm across the community*. Retrieved from: https://www.cancercouncil.com.au/wp-content/uploads/2010/11/10292_CAN25259_LocalGov_Tobacco_WEB.pdf
- Cancer Council WA. (2008). *The progress of tobacco control in Western Australia: achievements, challenges and hopes for the future*. Cancer Council Western Australia, West Perth.

- Chapman S and Penman A. 'Can't stop the boy': Philip Morris' use of Healthy Buildings International to prevent workplace smoking bans in Australia. *Tobacco Control* 2003;12(suppl. 3):iii107–12. Retrieved from: http://tobaccocontrol.bmj.com/cgi/content/abstract/12/suppl_3/iii107
- Collins, D.J. and H.M. Lapsley. (2008). *The social costs of smoking in Western Australia in 2004–05 and the social benefits of public policy measures to reduce smoking prevalence*. Cancer Council Western Australia: Perth.
- Department of Planning, Lands and Heritage. (2018). City of Vincent Local Planning Scheme No. 2. Retrieved from: [https://www.planning.wa.gov.au/LPS/DATA/Local%20Planning%20Schemes/Vincent%20-%20City%20of%20\(Scheme%202\)/scheme%20text.pdf](https://www.planning.wa.gov.au/LPS/DATA/Local%20Planning%20Schemes/Vincent%20-%20City%20of%20(Scheme%202)/scheme%20text.pdf)
- DiFranza, J. R., Wellman, R. J., Sargent, J. D., Weitzman, M., Hipple, B. J., & Winickoff, J. P. (2006). Tobacco promotion and the initiation of tobacco use: assessing the evidence for causality. *Pediatrics*, 117(6), e1237-e1248.
- Drope J and Chapman S. (2001). Tobacco industry efforts at discrediting scientific knowledge of environmental tobacco smoke: a review of internal industry documents. *Journal of Epidemiology and Community Health*. 55(8):588–94. Available from: <http://jech.bmj.com/cgi/content/full/55/8/588>
- Government of Western Australia. (2006) Tobacco Products Control Act 2006.
- Government of Western Australia. (1996). Local Government Act 1995.
- Government of Western Australia Department of Health. (2011). *Review of the WA Tobacco Products Control Act 2006: Final Report*.
- Government of Western Australia Department of Health. (2008). *Smoking in specific outdoor public places, prisons and in private cars: A review*. Public Health Division, Editor.
- Jaglowitz, C. (2009). *Court of Appeal smokes the “private club” defence*. The Ontario Condo Law Blog. Retrieved from: <https://www.ontariocondolaw.com/2009/12/articles/living-together/court-of-appeal-smokes-the-private-club-defence/>
- Kavanagh, A. M., Kelly, M. T., Krnjacki, L., Thornton, L., Jolley, D., Subramanian, S. V., ... & Bentley, R. J. (2011). Access to alcohol outlets and harmful alcohol consumption: a multi-level study in Melbourne, Australia. *Addiction*, 106(10), 1772-1779.
- Kumar, S.R., Davies, S., Weitzman, M. & Sherman, S. (2015). A review of air quality, biological indicators and health effects of second-hand waterpipe smoke exposure. *Tobacco Control*. 24 Suppl 1:i54-i9. Epub 2014/12/07
- Leatherdale, S. T., & Strath, J. M. (2007). Tobacco retailer density surrounding schools and cigarette access behaviors among underage smoking students. *Annals of Behavioral Medicine*, 33(1), 105-111.
- Lovato, C., Watts, A., & Stead, L. F. (2011). Impact of tobacco advertising and promotion on increasing adolescent smoking behaviours. *Cochrane database of systematic reviews*, (10).
- Mark, A. J., Sanders, S. C., Mitchell, J. A., Seale, H., & Richmond, R. L. (2014). *Smoke-free outdoor areas: supporting local government to introduce tobacco control policies*. Australian and New Zealand journal of public health, 38(6), 518-523.
- National Health Performance Authority. (2013). *Tobacco smoking rates across Australia, 2011–12*.
- Ontario Ministry of Health and Long-Term Care. (2018). *Smoke-Free Ontario: The Next Chapter 2018*. Retrieved from: <http://www.health.gov.on.ca/en/common/ministry/publications/reports/SmokeFreeOntario/default.aspx>
- Ontario Tobacco Research Unit. (2012). Prohibition of tobacco sales in specific places: Monitoring update. Available from: <http://otru.org/wp-content/uploads/2012/10/sales2012.pdf>
- Pickett, M. S., Schober, S. E., Brody, D. J., Curtin, L. R., & Giovino, G. A. (2006). Smoke-free laws and secondhand smoke exposure in US non-smoking adults, 1999–2002. *Tobacco Control*, 15(4), 302-307.
- Preventative Health Taskforce. (2009). *Tobacco Control in Australia: Making Smoking History, in Australia: The healthiest country by 2020*. Commonwealth of Australia: Canberra.
- Popova, S., Giesbrecht, N., Bekmuradov, D., & Patra, J. (2009). Hours and days of sale and density of alcohol outlets: impacts on alcohol consumption and damage: a systematic review. *Alcohol & Alcoholism*, 44(5), 500-516.
- Scollo, M.M. and M.H. Winstanley. (2012). *Tobacco in Australia: Facts and issues*. Cancer Council Victoria: Melbourne.
- South Metropolitan Population Health Unit (2014). *Pathway to reducing harm from tobacco use: A guide for local government*. Fremantle: SMPHU, Department of Health WA.
- Swanson, M.G. and B. Durston. (2011). *Tobacco control legislation and public policy in Western Australia 1911–2010*. National Heart Foundation of Australia (WA Division).
- Tilson, M. 2011. Reducing the availability of tobacco products at retail: policy analysis. Non-Smokers' Rights Association. Retrieved from: https://nsra-adnf.ca/wpcontent/uploads/2016/07/Reducing_Retail_Availability_policy_analysis_final_2011.pdf

- US Department of Health and Human Services. (2012). Preventing tobacco use among young people: A report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2012/
- Vic Health. (2014). *Preventing tobacco use: local government action guide*. Retrieved from: <https://www.vichealth.vic.gov.au/media-and-resources/publications/vichealth-indicators-action-guides-2015>
- VicHealth Centre for Tobacco Control. (2002). *Environmental Tobacco Smoke in Australia, in National Tobacco Strategy 1999 to 2002–03 occasional paper*. Commonwealth of Australia: Canberra.
- Waziry, R., Jawad, M., Ballout, R. A., Al Akel, M., & Akl, E. A. (2017). The effects of waterpipe tobacco smoking on health outcomes: an updated systematic review and meta-analysis. *International journal of epidemiology*, 46(1), 32-43.
- Wood, L., & Gazey, A. (2021). Tobacco mythbusting—tobacco is not a major driver of foot traffic in low socio-economic small retail stores. *Tobacco Control*. 0:1–4. doi:10.1136/tobaccocontrol-2020-056310
- World Health Organization [WHO]. (2015). Advisory note: waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators. *Advisory note: waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators.*, (Ed. 2).
- World Health Organization. (2012). Tobacco industry interference: a global brief. Geneva: World Health Organization. <http://www.who.int/iris/handle/10665/70894>
- World Health Organization, & WHO Tobacco Free Initiative. (2008). Tobacco industry interference with tobacco control. Retrieved from: http://apps.who.int/iris/bitstream/handle/10665/83128/9789241597340_eng.pdf?sequence=1
- World Health Organization. (n.d.). *Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry*. Retrieved from: http://www.who.int/fctc/guidelines/article_5_3.pdf

ADMINISTRATION COMMENTS

Administration supports the investigation into options for changes to the planning framework to prohibit land uses where the primary purpose of the premises is where tobacco and other products to be used for smoking are offered for sale or consumed.

To align City's Local Planning Scheme No. 2 (LPS2) with the long term health outcomes of the City's Public Health Plan 2020-2025 (PHP) the City could investigate an amendment to LPS2 to change the permissibility of 'restricted premises' to an 'X' use. This may include a revision of the model provision land use definition of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) to separate smoking related implements from the restricted premises land use and prohibit this in all zones.

This approach is consistent with the deliverables 1.1 "*Incorporate public health, wellbeing and health equity principles and priorities into City policies, plans, reports, programs and activities*"; and 18.4 "*Advocate for reduced exposure to alcohol and tobacco advertising, marketing, promotion and sponsorship*" of the PHP. However as a new land use definition would be inconsistent with the Model Provisions of the Regulations, as it would introduce new land uses, there is a risk the approach would not be supported by the State Government.