

**REPORT TO : POLICY AND RESOURCES COMMITTEE - 13 NOVEMBER 2006**

**REPORT ON : EXTERNAL SMOKING AREAS**

**REPORT BY : DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)**

**REPORT No : 661- 2006**

**1. PURPOSE OF REPORT**

- 1.1 To advise the Committee of the statutory and non statutory consents, orders and permissions required before licensees can operate external smoking areas

**2. RECOMMENDATION**

- 2.1 The Committee are recommended to approve the contents of this Report

**3. FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications arising directly out of this Report.

**4. SUSTAINABILITY POLICY IMPLICATIONS**

- 4.1 There are no sustainability policy implications arising out of this Report.

**5. EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 There are no equal opportunities implications arising out of this Report.

**6. BACKGROUND**

- 6.1 The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 came into force on 26 March 2006 and resulted in a ban on smoking in public places which are wholly or substantially enclosed.

- 6.2 No smoking is therefore allowed inside licensed premises.

- 6.3 The Licensing Board at their meeting on 19 January 2006 considered Report No 86-2006 (Article III refers). It was acknowledged that patrons in public houses are likely to want to exit the premises and stand outside to smoke and that it will be difficult for licensees to exercise any control over those patrons especially if the patrons are simply standing in the street and not in , say, an external smoking area which is under the direct management and control of the licensee.

It was also acknowledged that interest had been shown by licensees regarding the erection of outdoor facilities to accommodate customers wishing to smoke in outdoor areas in the immediate vicinity of the premises, for example to the front, rear or side of their premises either on their own land or on Council owned pavements.

The Board therefore formulated a policy on such matters so that licensees could plan ahead and decide how they wanted to proceed

- 6.4 It is believed that, in a similar vein, it would be helpful to licensees to be aware of the statutory and non statutory consents, orders and permissions required for the Council (as opposed to the Licensing Board) before licensees can operate external smoking areas.

## **7.0 CONSENTS, ORDERS AND PERMISSIONS**

- 7.1 The principal consent likely to be required is planning consent and licensees will require to make application to the Director of Planning and Transportation as appropriate.
- 7.2 If the smoking area is to be on the adopted footway a stopping up order under the Town and Country Planning (Scotland) Act 1997 will require to be promoted and confirmed before the affected area of adopted footway can be freed from public rights of access and the question of the future maintenance of the area, liability for slips, trips and falls and any maintenance of statutory undertakers' apparatus must be properly regulated and protected. Again licensees should contact the Director of Planning and Transportation in this regard
- 7.3 A road opening permit under the Roads (Scotland) Act 1984 may be required. Again licensees should contact the Director of Planning and Transportation in this regard.
- 7.4 Listed Building Consent may be required. Again licensees should contact the Director of Planning and Transportation in this regard.
- 7.5. A building warrant may be required. Again licensees should contact the Director of Planning and Transportation in this regard.
- 7.6 Landowner's consent may be required. Licensees should contact the Director of Economic Development in this regard and should note that a consideration or rental may be required and that legally binding agreements will require to be entered into.
- 7.7 When considering applications for Landowners consent the following will be relevant considerations
1. Increase in noise related problems - Patrons outside will undoubtedly lead to a greater degree of noise generally. Depending on the area this could lead to noise complaints being lodged with the Police.
  2. Public Order Issues - There could be public order issues arising from premises which have outdoor smoking areas operating during all the permitted hours all year especially later in the evening which would place a greater strain on Police resources.
  3. Increase in Litter - there is likely to be an increase in discarded cigarette ends at the door of no-smoking premises. There is also likely to be other litter associated with these areas such as crisp packets, bottles, cans and as most public houses do not have litter receptacles fitted in the immediate vicinity of the premises additional bins may have to be placed. The question of who would purchase these bins would have to be addressed.
  4. Where pavements are owned by the Council it is not envisaged that ownership will be ceded to a licensee on a permanent basis. Where adopted public pavements are maintained by the Council it is not envisaged that this responsibility would be ceded to a licensee on a permanent basis.
  - 5 Permanent structures on the pavement such as railings or grilles could cause an obstruction and lead to street sweeping problems.
  6. The Police must confirm that the proposal will not affect the operation of CCTV cameras
- 7.8 This list is not exhaustive and it will be necessary for licensees to seek their own independent advice on the full range of legal requirements necessary to be satisfied before they may fully implement their proposals.

**8.0 CONSULTATION**

8.1 The Chief Executive, Depute Chief Executive (Finance), Director of Planning and Transportation and Director of Economic Development have been consulted in the preparation of this Report.

**9.0 BACKGROUND PAPERS**

9.1 None

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3 November 2006