



Executive summary for LegCo:

6 Sep, 2005

Proposed Smoking Ordinance amendments 2005



- * **Every worker, everywhere** – all indoor workplaces
 - **No exemption for any liquor licence** holders – you just make their job harder
 - **Specifically list private clubs** or they will challenge the law
 - **No exemptions for cigar bars or tobacco shops** – the most polluted places
- * **No Ventilation exemptions** – it does not work
- * **Indoor workplace means a roof – and no walls**
 - Pollution gets trapped even under an umbrella at unhealthy levels
- * **Do not use public property to prevent people from quitting – businesses need a level playing field.**
 - No FEHD approval for al fresco dining on the pavement unless it is smoke-free.
- * **Include all Public Places like ferry piers – it is already the law**
 - No exemptions for any public place. To “Deposit Litter” according to the legal definition includes “blowing .. offensive, noxious or obnoxious matter”. Do not water down our existing laws to collude with the tobacco industry.
- * **“Accommodating smokers” means “colluding with the Tobacco Industry”**
- * **“Accommodating smokers” means “preventing people from quitting”**
 - Airport should switch smoking rooms to “nicotine” rooms
 - Close all the private smoking lounges
 - Stop selling tobacco (best choice)
 - Stop selling tobacco duty free (second best choice)
 - Remove massive “Smoking Lounge” sign right after Customs in departure level
- * **Advertising**
 - Specify that payment is not required for a tobacco ad under the definition
 - Health Messages must stop being Tobacco Ads – eliminate the “health message” exemption



Liquor Licencing Board News from the hearings.

This is what we hear:



Top Ten:

1. We fully support the proposed ban.
2. Pass the law and we will comply.
3. I want to protect my employees but there is no law - so I can't.
4. We CANNOT ask people to quit because there is no law.
5. People have a legal right to smoke – we CAN'T stop them.
6. We have to accommodate smokers or they will go to the competition.
7. My ventilation system ensures clean air even if people smoke. If it didn't the FEHD would not have given me a restaurant / light refreshment licence.
8. The Health and Safety Laws don't apply to my employees because the law does not specifically ban smoking.
9. Why does the Government allow my competitor to use *public property* outside his premises to allow smoking when I have to ban it? I want to go smoke free, but the pavement outside my shop is too small. The smokers will all go over there. Government should *not allow smoking on public property for outdoor dining*. It is not fair to businesses like mine.
10. I will not allow my premises to be used for any illegal purpose. I will follow all laws.

Conclusion:

- Liquor Licence holders WANT to protect their employees
- They feel they CANNOT unless a law is passed which specifically makes it illegal for customers to smoke.

Pass the law with no exemptions. Liquor Licence holders want to protect their employees.



Private Clubs – the MOST polluted places

Harming employees health

Discriminating against members with lung disease

Except those members with lung disease

– who must risk their life just to enter

**Members
Only!**

Chapter:	487	Title:	DISABILITY DISCRIMINATION ORDINANCE	Gazette Number:	L.N. 315 of 1998
Section:	2	Heading:	Interpretation	Version Date:	05/11/1998

"club" (會社) means an association, incorporate or unincorporate, of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that-

- (a) provides and maintains its facilities, in whole or in part, from the funds of the association; and
- (b) ***sells or supplies liquor for consumption on its premises;***

Chapter:	487	Title:	DISABILITY DISCRIMINATION ORDINANCE	Gazette Number:	
Section:	6	Heading:	Discrimination against persons with disability, etc.	Version Date:	30/06/1997

PART II

DISCRIMINATION TO WHICH ORDINANCE APPLIES

A person discriminates against another person in any circumstances relevant for the purposes of any provision of this Ordinance if-

(a) on the ground of that other person's disability he treats him less favourably than he treats or would treat a person without a disability;

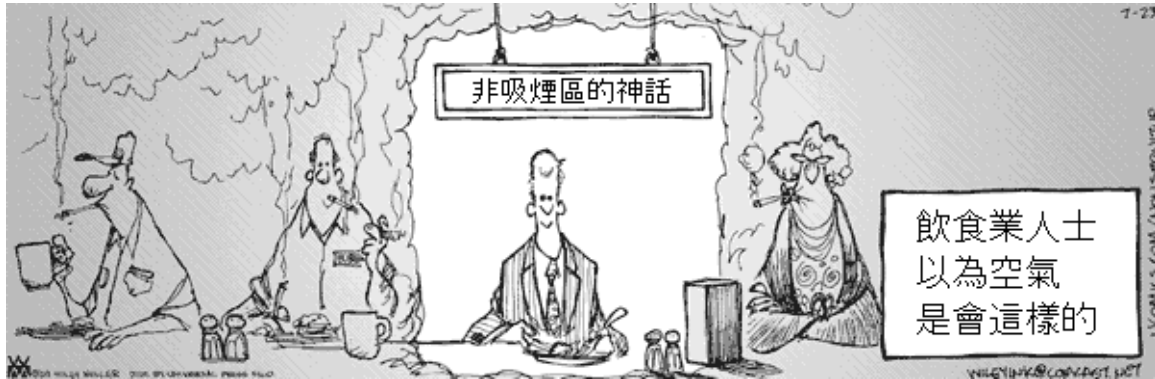
(b) he applies to that other person a requirement or condition which he applies or would apply equally to a person without a disability but-

- (i) which is such that the proportion of persons with a disability who can comply with it is considerably smaller than the proportion of persons without a disability who can comply with it;
- (ii) which he cannot show to be justifiable irrespective of the disability or absence of the disability of the person to whom it is applied; and
- (iii) **which is to that person's detriment because he cannot comply with it;** or

(c) **on the ground of the disability of an associate of that other person he treats him less favourably than he treats or would treat a person without such a disability.**



Ventilation does not work



Philip Morris USA

High-quality ventilation systems ... NOT shown to address the health effects of second hand smoke

(philipmorrisusa.com/policies_practices/public_place_smoking.asp)

ASHRAE

American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

“Addendum 62o removes reference to smoking spaces from Table 2 of outdoor air requirements, making it clear that the **requirements in the table apply to only no-smoking spaces.**”

Joint Research Centre (JRC), one of the EU's most important scientific institutions.

“Increased ventilation will do little to clear harmful tobacco smoke from pubs and restaurants ... The surprise finding that fans and extractors do little to clear chemicals released by cigarettes turns on its head both conventional wisdom and the notion this might provide a way out for pub owners seeking to block the Government's smoking ban.”

FSD - Fire Services Department – Hong Kong

“Our Letter of Compliance on Ventilating System was issued to **certify the fire safety aspect** at ventilation installation rather than health and hygiene matters.”

FEHD – Food and Environmental Hygiene Department

The air exchange rates for adequate air flow are given to us by the EPD

EPD – Environmental Protection Department – Uses ASHRAE Air exchange rates



“Indoor” means a roof –
any roof.

If it keeps out the sun and
rain – it keeps in the
pollution



1. Anyplace with a roof traps the pollution and make employees sick. An indoor workplace is one with a roof or any other cover.
2. Level playing field –

A Sai Kung liquor licence holder contacted us saying that he was concerned that allowing smoking outdoors creates an uneven playing field. He said that since he and another small rural family have no private land and cannot ask the FEHD to let them use the pavement because it is too narrow they are afraid smokers will go to competitors who are using public land.

We must not sacrifice small rural licensed premises to unfair competition in order to favour the tobacco industry.

News from Ireland that show how a law that favours the tobacco industry actually forces liquor license holders into expensive and uncompetitive business situations - when all they want is a level playing field at no additional cost.

Irish smoking ban raises roof question

Monday, April 25 2005

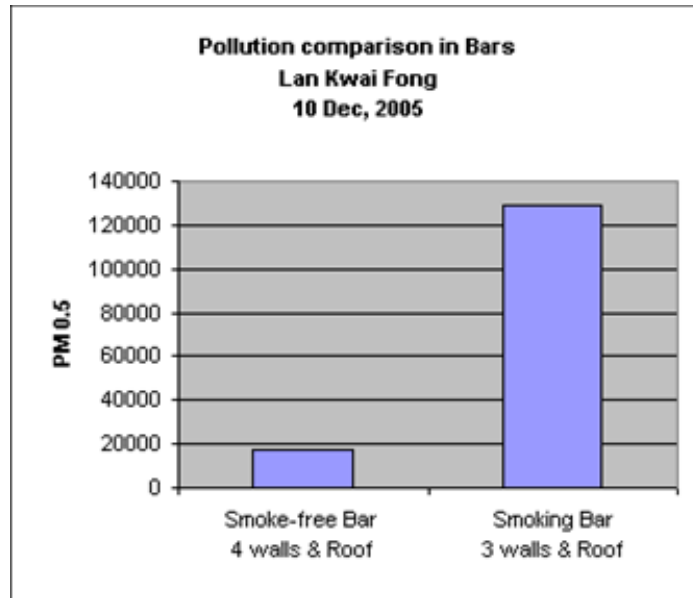
Ms McCaffrey said: ‘Premises which don’t have an outdoor area feel disadvantaged by neighbouring establishments which are putting in a virtually enclosed space, claiming that it is outside.’

Health and Safety Authority – Ireland

Q: I am an employer preparing to implement the ban on smoking in my workplace. Am I **obliged** to provide an outdoor smoking facility?



3. Government should not grant public property to premises to allow people to smoke – the community has no responsibility to support the tobacco industry in killing us.
4. **Results of measurements by Clear the Air in bars in Lan Kwai Fong, 10 Dec 2004**



Conclusion:

If it has a roof or an awning of any sort, it is indoors.

Public property granted for outdoor dining must be smoke free.



Public places, the Airport and the Ferry

- It is already illegal to smoke in public places like the ferry and the airport (see litter)
- Provide nicotine rooms (gum, patches etc) and advice on quitting in the “smoking lounges” – but do not allow smoking. This addresses travelers “need” for nicotine. Put the rooms under the control of the Hospital Authority and take them away from the Tobacco Industry.
- Start charging duty on tobacco at the airport and use the money to fund the nicotine rooms.

Question: Does the Airport Authority get a percentage of the sales of the duty free tobacco at the airport – or just the rent from the retail outlet?

- Stop marketing the smoking lounges and smoking outlets on the Internet immediately – this is already illegal and we have reported it to Tobacco Control.
- Eliminate all sales of tobacco at the airport (preferable)
- Require duty to be paid on all tobacco at the airport (second choice)
- Eliminate all F&B outlets that allow smoking
- Eliminate all private smoking lounges – e.g. Cathay Pacific Marco Polo Lounge

Ad on the Hong Kong International Airport website

Well-ventilated Smoking Lounges

MAP



Smoking is prohibited inside the passenger terminal except in designated smoking Areas



One of 12 smoking lounges located in the HKIA terminal building

“Smoking in the HKIA passenger terminal is prohibited by the Smoking (Public Health) Ordinance and AA by-laws. *However, smokers have their own lounges where they can while away time in the company of fellow habitu.* There are altogether 12



lounges, seven on boarding level and five on arrivals level, in various locations. All are comfortably furnished, air-conditioned and have air-fresheners/ionisers for extra comfort. Two are specially equipped with an advanced ventilation system and comfortable sofas. The ventilation system assures smokers a quality environment and stops musty air from leaking into the passenger terminal.”

What happened to our smoke-free airport?

- (a) 12 lounges, seven on boarding level and five on arrivals level.
- (b) 2 bars that allow smoking, 1 restaurant
- (c) At least one private smoking lounge (Cathay Pacific)
- (d) And we sell the tobacco **duty free** ...
- (e) **Stop marketing tobacco – start marketing “quitting” instead**



Litter in Public Places

Smoking is “depositing litter” and is illegal

Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE

Section: 2 Heading: Interpretation

"**deposit**" (棄置), in relation to litter or waste, includes to cast, throw, spray, sweep, place, drop, discharge, spill, dump, tip, scatter or **blow** such litter or waste; (Added 72 of 1981 s. 2)

"**litter**" (扔棄物) includes-

- (a) any earth, dirt, soil, dust, ashes, paper or refuse;
- (b) any glass, china, earthenware or tin;
- (c) any mud, clay, brick, stone, plaster, sand, cement, concrete, mortar, wood, timber, sawdust, plastic, construction material or excavated material;
- (d) any rubble, rubbish or debris;
- (e) any filth, manure, dung, excretal matter and any other **offensive, noxious or obnoxious matter** or liquid; and
- (f) **any substance likely to constitute a nuisance**; (Added 72 of 1981 s. 2)

Chapter: 311 Title: AIR POLLUTION CONTROL ORDINANCE

Section: 10 Heading: Air pollution abatement notice

"**nuisance**" (滋擾) includes an event which is obnoxious and which results in any of the effects set out in section 10(2)(h); (Added 13 of 1993 s. 2)

- (h) any of the following effects which, in the opinion of the Authority or the authorized officer, is caused by or contributed to by the emission-
 - (i) the deposit of dust, grit or particles of any kind;
 - (ii) **an objectionable odour**;
 - (iii) the staining of, corrosion or damage to, a building, plant, equipment or other material;
 - (iv) **the irritation of the eye, nose or skin or any other sensory discomfort**;

Chapter: 132BK Title: PUBLIC CLEANSING AND PREVENTION OF NUISANCES
REGULATION

Section: 4 Heading: Dumping of litter in public places

PART II

PREVENTION OF NUISANCES IN STREETS AND PUBLIC PLACES

- (1) No person shall deposit or cause or permit to be deposited any litter or waste on or in-
- (a) any street or public place;

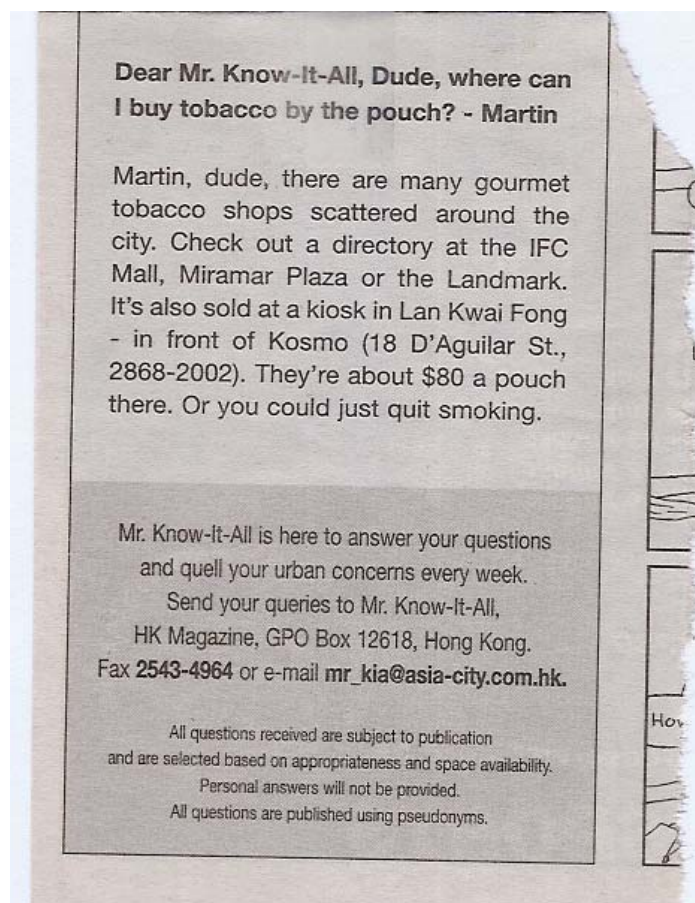


Advertising – the “health message” loophole

Chapter: 371	Title: SMOKING (PUBLIC HEALTH) ORDINANCE	Gazette Number: L.N. 124 of 1998
Section: 14	Heading: Meaning of tobacco advertisement	Version Date: 01/07/1998

(1A) Notwithstanding subsection (1)(c), an advertisement is not regarded as a tobacco advertisement if its purpose is to discourage smoking. (Added 93 of 1997 s. 15)

Example 1.

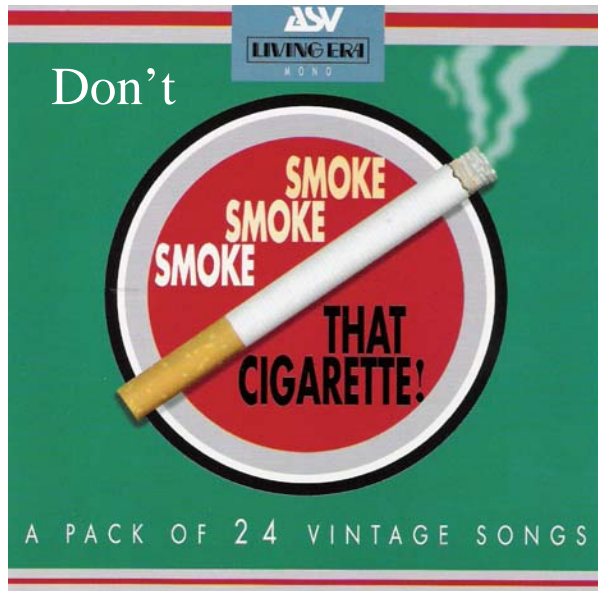




Advertising – the “health message” loophole

Example 2.

Tobacco Industry - “health” ads?



“Think, don't smoke”

Don't
Smoke

Which graphic triggers nicotine addiction?

Show the tobacco:



Don't show the tobacco:





Advertising – the “health message” loophole

Example 3

Health Department - “health” ads?

Health department Ad which has images that are known to trigger the addictive response for nicotine

http://www.isd.gov.hk/eng/tvapi/05_md153.html

Example 4

Newspaper - “health” ads?

South China Morning Post - Sunday 4 September, 2005

After Clinton, women discover how good a cigar can be

Oliver Duff – The Independent

History is littered with examples of "great men" such as Winston Churchill with thick rolls of tobacco leaf clamped between their teeth. Blowing industrial-sized funnels of smoke from a tree-trunk of a cigar has, until now, been seen as a mainly masculine pursuit.

Otto von Bismarck considered them an essential diplomatic aid and Evelyn Waugh said: "The most futile and disastrous day seems well spent when it is reviewed through the fragrant smoke of a Havana cigar."

Given all this and the rather inglorious recent history of women and cigars - think Bill Clinton and the intern - it may be surprising to learn that for a growing number of British females, happiness really is found in a good cigar. Manufacturers, retailers and industry analysts say a small but **rapidly growing number of women are choosing to indulge in a classier, more leisurely smoke.**

Just over one in ten adults occasionally or regularly smokes a cigar, some 5.3 million Britons. Almost 650,000 of these are said to be women, although they smoke far less often than men. Industry statistics show they accounted for 6.3 per cent of cigar sales last year, up more than half a percentage point in a year - with a far bigger jump expected for 2005. "We have seen a rise in women coming into the shop, particularly women buying cigars for themselves and not as presents for a man," said William Kutscher, of James J Fox & Co, cigar merchants in St



James's, London. **"They think it is a healthier alternative to smoking cigarettes and there's a certain kudos to it."**

He added: **"Our female customers tend to smoke the panatella size; about £4 or £5, and they might smoke a couple a week." The sophisticated woman's choice, apparently, is a Cuban-made Cohiba, costing £8.**

A spokesman for the Gallaher Group, manufacturer of Hamlet cigars, said there had been a "small but steady" rise in women buying cigars since 2000, and manufacturers hoped for a jump this year.

The trend is thought to result from the patronage of A-list celebrities such as Madonna, Catherine Zeta-Jones, Kate Moss and Sadie Frost - and most recently Victoria Beckham, pictured puffing on the yacht of the fashion designer Roberto Cavalli - together with a feeling of "anything the guys can do ..." (Women have also caught up with men in the port-drinking stakes, according to supermarkets.)

Kat Hawk, a 22-year-old nurse from Nottingham, occasionally indulges during family card games. "I smoke when I go down to my uncle's," she said. **"We play poker and have a few drinks, and the cigars are a bit of added fun."**

Sally Toms, assistant editor of Cigar Buyer magazine, said health- and image-conscious young women fed the fad: **"Cigarette smokers have got a bad reputation and cigars don't have so many chemicals and are glamorous... although they do have more tobacco."**

[Clear the Air note – the following is only the last 25% of the article, and most readers stopped reading at 50% or before]

Anti-smoking campaigners are, however, keen to emphasise that cigars are not a healthier alternative to cigarettes. Deborah Arnott, director of anti-smoking group Ash (Action on Smoking and Health) said: "Women may think they're less likely to get lung cancer but they have an equal chance to men. Smoking cigars can be just as harmful as cigarettes and even more so for former cigarette smokers, who often still inhale when they switch."

Paula Gordon, a 31-year-old events organiser from west London, found them no less addictive than cigarettes. "I perceived a difference between the two and so took to smoking a couple of cigars [a day]," she said. **"But I started smoking more and had a 10-a-day habit, so properly quit."**

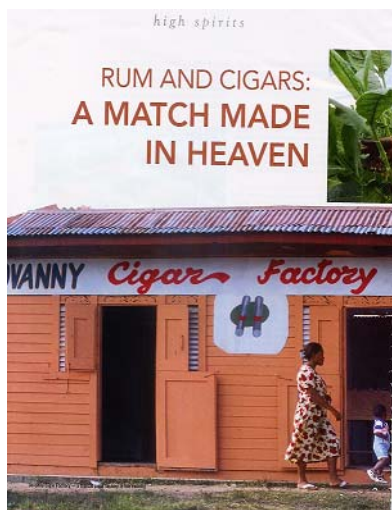
Researchers at Oxford University found that the risk of premature death in cigar or pipe smokers was raised by 10 per cent, compared to 70 per cent for cigarette smokers. But two cigars a day doubles the risk of oral cancers and four a day increases it eightfold.



Advertising – the “paid ad” loophole

Justice Department **added** a loophole

- if you cannot prove payment
- it means it is not an ad.



An article in The Peak magazine recently tells how great cigars are.

“After a tour of the cigar factory, it’s almost mandatory to visit the shop on the ground floor to buy a cigar (or a box).”

There was no mention of the damage done to tobacco users or description of the health effects on workers who are making the cigars.

Justice Department has ruled that if there is no payment then an article is not an advertisement.

Chapter: 371 - **Title:** SMOKING (PUBLIC HEALTH) ORDINANCE - **Section:** 14

Heading: Meaning of tobacco advertisement Version Date: 01/07/1998

- (1) For the purposes of this Part an advertisement is a tobacco advertisement if it-
- (a) **contains any express or implied inducement, suggestion or request to purchase or smoke cigarettes, cigarette tobacco, cigars or pipe tobacco;** (Amended 93 of 1997 s. 15)
 - (b) relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of cigarettes, cigarette tobacco, cigars or pipe tobacco; or (Amended 93 of 1997 s. 15)
 - (c) illustrates or mentions smoking or cigarettes, cigarette tobacco, cigars or pipe tobacco or their packages or qualities. (Added 93 of 1997 s. 15)