

**For discussion on
10 January 2005**

Legislative Council Panel on Health Services

**Proposed Amendments to Smoking
(Public Health) Ordinance**

INTRODUCTION

This note seeks to brief Members on our plan to introduce legislative amendments to protect the public against secondhand smoking in indoor workplaces/public places, to tighten control over the advertisement and promotion of tobacco products and to bring about more effective law enforcement.

PROBLEM

2. Since the Smoking (Public Health) Ordinance (“the Ordinance”) was last amended in 1997, there have been community calls for more stringent control over the use and promotion of tobacco products. Secondhand smoking by non-smokers remained a commonplace in many catering premises. There is a pressing need to expand statutory no smoking areas to protect the working population from passive smoking. Separately, certain provisions in the Ordinance governing tobacco advertisement and promotion were observed to have been circumvented. The lack of explicit provisions empowering the Tobacco Control Office of Department of Health to enforce the Ordinance has also proven to be an operational constraint.

RECENT DEVELOPMENTS

3. Following a consultation exercise conducted in mid 2001, anti-smoking advocates, the healthcare sector and the majority of the public have been urging the Administration to implement a smoking ban in indoor workplaces and public places. At the sitting of the Legislative Council on 20 October 2004, the motion calling for expeditious implementation of a total smoking ban in workplaces, restaurants and

indoor public areas was carried by a large margin. Internationally, the adoption of the Framework Convention on Tobacco Control (FCTC)¹ by the World Health Organization (WHO) in May 2003 has heightened momentum for tightening tobacco control laws worldwide.

4. Having regard to the irrefutable health hazards of smoking and secondhand smoking, the latest community opinions and international developments, we will introduce a bill into the Legislative Council in the first half of 2005 to amend the Ordinance to address the substantive issues described in paragraphs 5-17 below.

PROPOSED AMENDMENTS

Expansion of Statutory No Smoking Areas

5. Under the existing legislation, smoking is prohibited in certain indoor public places such as cinemas, shopping malls, supermarkets, banks and department stores. We propose that the statutory smoking ban be extended to cover premises and places as elaborated in paragraphs 6-9 below.

Restaurants, Bars and Karaoke

6. Under the existing Ordinance, restaurants with seating capacity of less than 200 persons are not subject to statutory smoking ban. Those providing indoor seating accommodation for over 200 persons are required to designate at least one-third of such area as smoke-free area. In practice, this requirement has failed to protect restaurant goers and employees from secondhand smoking because tobacco smoke can diffuse from smoking areas to no smoking areas. Operationally, it has caused inconvenience to restaurant management and conflicts between smokers and non-smokers. To address these problems, we propose amending the Ordinance to prohibit smoking in the indoor areas of all licensed restaurants, regardless of their size and seating capacity. The smoking ban will also apply to bars and karaokes, many of which operate with a restaurant licence in practice.

¹ FCTC is an international treaty aimed at reducing tobacco-related deaths and diseases around the globe. Among other things, the treaty obliges party states to establish clean indoor air controls and impose restrictions on tobacco advertising and promotion. As at 31 December 2004, 168 and 48 WHO Member States have signed and ratified the treaty respectively. The Convention will come into force on 27 February 2005.

Educational and Welfare Institutions

7. The Ordinance presently provides that the principal of a school, university or tertiary institution may designate the educational premises as no smoking area. To promote a smokeless learning environment and to curb youth smoking, we plan to amend the Ordinance to ban smoking in both indoor and outdoor areas of all child care centres, kindergartens, primary and secondary schools, and in the indoor premises of universities and tertiary institutions.

8. At present, there is no requirement under the Ordinance to prohibit smoking in licensed/registered residential care homes for the elderly and nursing homes. Following consultations with the licensing authorities, we propose designating the indoor parts of these licensed premises as statutory no smoking areas under the Ordinance for the health benefits of patients, residents, elders and staff members therein.

Indoor Workplaces / Public Places

9. Currently, there is no legislation regulating smoking in workplaces and public places generally. A survey conducted by the Census and Statistics Department in 2001 revealed that over 700,000 persons working in indoor premises were subject to the influence of passive smoking. To remedy this situation, we plan to amend the Ordinance to prohibit smoking in all indoor workplaces and public places. For the purpose of this amendment, we propose defining indoor workplaces and public places along the following lines.

“Workplace means a place where persons are employed or engaged to work, whether for remuneration or otherwise.”

“Public place means any place to which the public are entitled or permitted to have access, whether on payment or otherwise.”

“A place covered by a ceiling or roof is not indoor unless the place is also completely or substantially enclosed except for doors and other closable openings”

Advertisement and Promotion of Tobacco Products

Display of Tobacco Advertisement

10. Under the existing Ordinance, the display of tobacco advertisement is prohibited except at licensed hawker stalls and retail outlets employing not more than two employees. We observe that such exemptions have become a source of abuse. For example, numerous tobacco advertisements are being displayed at small retail stalls selling tobacco products. Many large light-boxes displaying tobacco advertisements can be found in small shop premises throughout the territory. To arrest these undesirable phenomena, we propose amending the Ordinance to revoke the exemptions currently applicable to licensed hawker stalls and retail outlets with two employees or less.

Price Board and Price Marker

11. Presently, price boards (for more than one tobacco brand) and price markers (for one single tobacco brand) can be lawfully displayed inside premises selling tobacco products. The Ordinance confines the size of a price board to 2,000 cm² while there is no size limit for price markers. To prevent price markers/price boards from being used as advertising vehicles for specific brands of tobacco products, we plan to amend the Ordinance to limit the size of price boards and price markers to 1,500 cm² and 50 cm² respectively.

Sale of Tobacco Products in Association with Other Products

12. The existing legislation stipulates that a tobacco product cannot be sold in association with any gift, token, stamp or raffle ticket that may be exchanged for any gift. We have received complaints about bundled selling of tobacco products and non-tobacco products (e.g. watches or lighters), with the non-tobacco merchandises being priced much lower than their market values. To curb these business practices which seek to induce purchase of tobacco products, we propose amending the Ordinance to prohibit the sale of a tobacco product in association with any merchandise whether it is charged or not.

Tobacco Sponsorship

13. At present, the display of a tobacco brand name in any sponsored event is deemed a tobacco advertisement and hence prohibited. However, the display of the tobacco brand name and the sponsorship will be allowed if the tobacco brand name is displayed in conjunction with a non-tobacco product and if no words associated with “smoking”, “cigarette” or other tobacco products are mentioned. We notice that in some events jointly sponsored by tobacco and non-tobacco products, the

promotional materials were designed such that the brand name of the tobacco product was much more prominent than the non-tobacco product. We therefore propose amending the Ordinance to prohibit the appearance of the brand name of a tobacco product unless the name can be conspicuously and exclusively identified with a non-tobacco product.

Packaging and Labeling of Tobacco Products

Health warnings

14. Under the existing Ordinance, health warnings in prescribed size and wording and the amount of tar and nicotine yields are required to be shown on the package of cigarette products. To enhance the visual impact and deterrent effect of the warnings, we plan to introduce an explicit provision in the Ordinance enabling the health authority to prescribe health messages with pictorial and graphic contents. To conform to international practices, we also recommend increasing the prescribed area of the health messages to at least 50% of the largest surface areas of the packet/container of any tobacco product.

Misleading descriptors

15. At present, the use of descriptors on the packaging of any tobacco product such as “light”, “mild” and “low tar” is permitted. There is no scientific evidence indicating that products with these descriptors pose lesser health risks to smokers. On the contrary, the above descriptors may give the false impression that the tobacco products concerned are less harmful than others, thus encouraging deeper inhalation and increased daily consumption by smokers. In line with international practice, we propose amending the Ordinance to prohibit the appearance on the packaging of any tobacco product of the words “light”, “lights”, “mild”, “milds”, “low tar” or other words that may have the same misleading effect.

Law Enforcement

16. At present, several government departments are involved in enforcing the Ordinance, namely, the Police, Customs and Excise Department and Marine Department. In addition, managers of statutory no smoking areas are also empowered to enforce the law. In February 2001, the Tobacco Control Office (TCO) was established under the Department of Health to enhance and coordinate Government’s efforts on tobacco control. There was however no concurrent conferment of legal

powers on TCO officers to take enforcement actions under the Ordinance. To address this deficiency, we propose introducing provisions in the Ordinance to empower TCO staff to initiate prosecutions against existing offences in the Ordinance and new offences² arising from the above-proposed amendments. We also propose giving TCO certain general powers of enforcement such as the powers of entry, investigation, sample-taking and seizure.

17. We believe government efforts alone are not adequate to eradicate smoking offences under the Ordinance. For effective handling of smoking-related complaints and expeditious removal of nuisances caused by secondhand smoking, managers of statutory no smoking areas should take immediate remedial actions (e.g. requiring a smoker to extinguish a lighted cigarette) upon detecting or being notified of a smoking act. We therefore propose extending the enforcement powers conferred on managers of existing statutory no smoking areas to managers of new statutory no smoking areas such as indoor workplaces, schools, restaurants and bars. If premises managers experience practical difficulties in enforcing the no smoking requirement, they can record the details of an alleged offence (such as names and identity card/passport numbers of smokers) and refer the case to TCO for follow-up.

EXCEPTIONAL ARRANGEMENTS AND TRANSITIONAL PROVISIONS

18. We believe appropriate transitional provisions should be built into the amendment bill to facilitate compliance with the new statutory requirements. A summary of the proposed transitional periods for the various amendments is at Annex. During the adaptation periods, we will publicize the new regulatory requirements among the communities and trades concerned and offer necessary training and assistance to promote compliance.

19. While our proposals will subject the majority of indoor areas in non-residential buildings to mandatory smoking ban, some places will be excluded from the proposed definition for indoor workplaces due to human rights, privacy and enforceability considerations. These comprise accommodation areas including private residence, staff

² TCO's ambit will not cover Part III of the Ordinance concerning sale of tobacco products, the enforcement of which will continue to rest with the Customs and Excise Department.

dormitories, guest rooms and suites in hotels and guesthouses³, public walkways/carriageways, buildings under construction, smoking compartments in airport passenger terminals and correctional institutions, commercial bathhouses and mahjong places.

20. Given the very large clientele and workforce associated with food business premises in Hong Kong, we consider it inappropriate from the public health angle to exempt the indoor part of these premises from the smoking ban. To address legitimate concerns⁴ from the catering industry, we propose that a longer adaptation period of 12 months be allowed for licensed restaurants and bars. We consider it important to apply the same transitional arrangements to different types of food premises to avoid distorting the level playing field. The adaptation period for restaurants and bars will also apply to karaokes and discos, most of which are licensed food premises in the legal sense.

SOCIO-ECONOMIC IMPLICATIONS

21. The legislative amendments will benefit the whole community by reducing public exposure to secondhand smoke and preventing the youths from starting to smoke. The proposed expansion of statutory no smoking areas will provide an impetus for current smokers to quit smoking, thereby helping to keep the smoking prevalence in Hong Kong in check. The healthcare expenditure for treating smoking-related diseases, which is estimated to amount to \$900 million per annum, is likely to drop as a result of implementation of the legislative proposals.

COMMUNITY INVOLVEMENT

22. Sustained public support is essential for smooth implementation of the legislative proposals. We will continue to arouse community awareness about the costs and hazards of smoking and secondhand

³ The smoking ban will apply in all indoor areas of hotels and guesthouses apart from guest rooms and staff dormitories. However, smoking will be allowed in all outdoor areas within hotel complexes such as open-air swimming pools, sitting-out areas, playgrounds, outside seating accommodation of restaurants/bars, rooftops, non-enclosed sidewalks/corridors, balconies, etc.

⁴ There used to be claims that the catering trade would be adversely affected by a total smoking ban. In general, such claims are not consistent with the empirical experience in overseas jurisdictions where similar smoking bans have been implemented, e.g. New York, California and Ireland. We believe the smoking ban should have no material distorting effect on competitive forces driving the industry so long as exclusionary and differential treatments are kept to a minimum.

smoking through publicity and educational activities in the coming months. We will work closely with the Hong Kong Council on Smoking and Health, non-governmental agencies and district organizations in disseminating anti-smoking messages to the community at large.

CONCLUSION

23. Members' views are sought on the above proposals to amend the Ordinance.

Health, Welfare and Food Bureau
Department of Health
January 2005

**Proposed Transitional Periods for Amendments
to the Smoking (Public Health) Ordinance**

Nature	Legislative Amendment	Suggested Transitional Period
Expansion of Statutory No Smoking Areas	<ul style="list-style-type: none"> To prohibit smoking in all restaurants, bars and karaokes 	1 year
	<ul style="list-style-type: none"> To prohibit smoking in both the indoor and outdoor areas of all child care centres, kindergartens, primary and secondary schools, and in the indoor premises of all universities, tertiary institutions, residential care homes for the elderly and nursing homes 	3 months
	<ul style="list-style-type: none"> To prohibit smoking in other indoor workplaces and public places 	6 months
Advertisement and Promotion of Tobacco Products	<ul style="list-style-type: none"> To revoke the current exemption on display of tobacco advertisement at licensed hawker stalls and retail outlets employing 2 employees or less 	1 year
	<ul style="list-style-type: none"> To confine the sizes of price boards and price markers to 1,500 cm² and 50 cm² respectively 	3 months
	<ul style="list-style-type: none"> To prohibit the packaged sale of a tobacco product with any other merchandise 	3 months
	<ul style="list-style-type: none"> To further restrict the appearance of brand name of tobacco product in any sponsored event 	3 months
Packaging of Tobacco Products	<ul style="list-style-type: none"> To introduce provision to allow statutory health warnings on tobacco products to contain pictorial and graphic contents 	1 year
	<ul style="list-style-type: none"> To increase the area containing the health warnings of any tobacco product packet/container to at least 50% of the largest surfaces 	
	<ul style="list-style-type: none"> To prohibit the appearance on a tobacco product packet/container of the words “light”, “mild” or other words which suggest that the tobacco product is of lower health risk than other tobacco products 	
Law Enforcement	<ul style="list-style-type: none"> To enable the authorization of staff of the Tobacco Control Office to initiate prosecutions against existing and new offences in the Ordinance (except Part III) 	3 months
	<ul style="list-style-type: none"> To confer on management of new no smoking areas enforcement powers similar to those presently conferred on management of existing no smoking areas 	Same as the transitional period applicable to the specific no smoking area concerned.

* All transitional periods count from the date of enactment of the amendment bill.