

**For discussion
on 1 June 2007**

Legislative Council Panel on Health Services

**Enforcement of Statutory Smoking Prohibition and
Proposed Introduction of a Fixed Penalty System for Smoking Offence**

PURPOSE

This paper briefs Members of the Administration's efforts in enforcing the smoking prohibition under the Smoking (Public Health) Ordinance (Cap. 371), and also outlines the latest progress of the proposal to introduce a fixed penalty system for smoking offence.

ENFORCEMENT OF THE STATUTORY SMOKING PROHIBITION

Background

2. The Smoking (Public Health) Ordinance (the Ordinance) provides a legal framework for restricting the use, sale and promotion of tobacco products in Hong Kong. The most recent amendment of the Ordinance in 2006 has significantly strengthened the tobacco control regime of Hong Kong in line with the provisions of the World Health Organization Framework Convention on Tobacco Control (FCTC).

3. In particular, the amendment of the Ordinance in October 2006 has significantly expanded the statutory no smoking areas under the Ordinance to cover a vast expanse of venues, including all indoor workplaces and indoor public places, public parks, swimming pools, bathing beaches and stadiums under the management of the Leisure and Culture Services Department (LCSD), the Hong Kong Wetland Park under the management of the Agriculture, Fisheries and Conservation Department, schools, hospitals and a number of other institutions, except for certain exemptions, with effect from 1 January 2007. A summary of all the statutory no smoking areas including those existing before the amendment of the Ordinance is at *Annex*.

Implementation Strategy

4. As the Administration had explained during the deliberations of the Bills Committee set up to scrutinize the Smoking (Public Health) Amendment Bill 2005, the statutory smoking prohibition under the Ordinance is to be

implemented through a strategy involving a mix of publicity and education on the one hand, and inspection and enforcement on the other –

- (a) **Publicity and education** focuses on promoting public awareness of the statutory smoking prohibition and the extent of statutory no smoking areas under the Ordinance, soliciting the co-operation of the relevant industries in managing their premises to achieve a smoke-free environment, and making appeal to the self-discipline of individuals and consideration for the health of others to promote voluntary compliance by smokers. Inculcating a social culture that respects the statutory smoking prohibition and exerts public pressure for compliance with the prohibition remains the key to effective and smooth implementation of the smoking prohibition, without which any enforcement strategy alone could not succeed.
- (b) **Inspection and enforcement** comprises making unannounced inspections and targeted enforcement, especially against black-spots identified on the basis of complaints submitted, for the purpose of creating deterrent effect and targeting significant violation of the smoking prohibition. This strategy also maximizes the effect of the resources for enforcement. This is so because smoking usually lasts only a few minutes, and it is impracticable for inspectors, no matter how large the establishment is, to enforce the law by rushing to any statutory no smoking area upon receipt of complaint.

Power to Enforce the Smoking Prohibition

5. At present, Tobacco Control Inspectors of the Tobacco Control Office (TCO) are appointed under the Ordinance as inspectors for the enforcement of, inter alia, the smoking prohibition under the Ordinance and that they may initiate prosecution action against offenders by way of summary proceedings. General powers and duties of TCO inspectors are set out in section 15G of the Ordinance. This section empowers an inspector to enter and inspect statutory no smoking areas which are in public places, to enter any place in which it is reasonably suspected that a smoking offence has been or is being committed, to require an offender to provide his name, address and proof of identity, and to collect evidence in connection with the offence.

6. For effective handling of smoking-related complaints and expeditious removal of the source of secondhand smoke, the Ordinance also empowers managers of statutory no smoking areas to request a smoker to stop smoking

and, if the smokers refuses, to request him to provide his name, address and proof of identity, or to leave the no smoking areas.

Publicity and Education

7. Since the passage of the amendments to the Ordinance in October 2006, TCO and the Council on Smoking and Health have launched a series of media and publicity campaigns to build support for the smoking ban, raise public awareness of the new statutory requirements, especially the statutory smoking prohibition and no smoking areas, and encourage smokers to quit. TCO has distributed over 1.4 million pieces of educational materials such as no-smoking signs and posters. These efforts would continue in the months to come. Notwithstanding the short time between the passage of the Ordinance and the coming into effect of the expanded statutory no smoking areas, and despite the vast expanse of new statutory no smoking areas, by and large the publicity and education efforts have been highly effective. By 1 January 2007 when the expanded no smoking areas took effect, a large proportion of members of the public had become aware of the statutory smoking prohibition and its extent.

8. The successful implementation of the statutory smoking prohibition would not have been possible without the co-operation and collaboration of the managers belonging to various industries covered by statutory no smoking areas. Indeed the successful implementation of the smoking prohibition depends a lot on the active cooperation and collaboration of managers, for instance, to clearly demarcate the extent of statutory no smoking areas, to make no smoking signs conspicuous on the premises to customers and users, to draw smokers' attention to the statutory smoking prohibition, and to exercise their powers conferred by the law to stop smoking within the statutory no smoking area where necessary. Foreseeing the need to equip venue managers with the knowledge to facilitate effective management of their premises, since October 2006, TCO has conducted more than 100 capacity building workshops for venue managers of various sectors, both public and private, and more than 5,000 participated. Guidelines specifically catering for the needs of venue managers in assisting implementation of the statutory smoking prohibition have also been published and distributed to schools, restaurants and other workplaces and the public.

9. Educating the public on the harmful effects of smoking and encouraging cessation of smoking is also an important part of public education. In this regard, TCO has also been working with non-government organizations to promote cessation at the community level. Smoking cessation information kits were produced and sent to all doctors, dentists and pharmacists to encourage their provision of smoking cessation advice in the course of their consultation sessions. The active and enthusiastic initiative from the

community such as pharmacists and pharmacies as well as other health care sectors to step up on their assistance in smoking cessation advisory services has been encouraging. Efforts will continue in this regard to encourage smoking cessation initiatives in the community.

TCO Complaint Hotline

10. TCO has set up a hotline through which members of the public can lodge their complaints in relation to smoking offence. As mentioned in paragraph 4(b) above, the purpose of receiving such complaints is not for the purpose of taking immediate enforcement action at the scene, which would not be possible in most cases. Rather, the main purpose of setting up the complaint mechanism is for identifying priority areas for taking targeted enforcement actions. Between 1 January 2007 and 20 May 2007, TCO has received over 8,000 complaints about smoking offences in statutory no smoking areas, although some of these are repetitive, as well as over 8,900 enquiries through the dedicated hotline, email and fax. TCO has initiated investigation for most complaints and conducted inspections for over 70% of all the complaints.

11. In order to increase the capacity of the complaint hotline, TCO has commissioned the Integrated Call Centre (ICC) to man the hotline since 1 February 2007. According to ICC, there were on average 5 operators handling incoming calls at any time daily from 9am to 10pm. Calls would be diverted to a message box for recording after 10pm and when no operator is available. In view of the large call volume, ICC has already increased the number of trained staff to 20 and expanded the capacity of the voice mailbox in mid May. TCO and ICC will continue to monitor the service demand for the hotline and deploy necessary manpower and resources accordingly for receiving complaints effectively.

TCO Enforcement Actions

12. Since its designation with enforcement power under the Ordinance in October 2006, TCO has undertaken over 4,000 unannounced inspections to shopping malls, restaurants and other statutory no smoking areas, including inspections conducted on the basis of complaints received, patrols made during special events such as flower fairs at Lunar New Year's time and football matches, and has also taken targeted enforcement actions in places of black-spot identified through complaints. During these enforcement actions, personal particulars of smoking offenders and other evidence would be collected for arranging issue of summons. TCO would also take the opportunity to advise venue managers on the extent of the statutory smoking prohibition and their

power conferred by the law to take actions to handle smoking acts in their premises which are statutory no smoking areas. Health education materials or signage will also be offered if the management of the premises has such a need.

13. During the period from 1 January to 20 May 2007, a total of 597 summonses have been arranged to be issued for smoking offences, including 188 that took place in amusement game centres, 77 in shopping malls, 76 in food premises, 60 in parks and 196 in other statutory no smoking areas (such as markets, backstairs, offices and public toilets etc). Offenders in all the 211 heard cases so far were all convicted. Meanwhile, during the period between 1 January 2007 and 31 March 2007, the police has also issued a total of 477 summonses to smoking offenders and that 94% of which were in amusement game centres.

Funding and Manpower

14. The estimated expenditure of TCO for the financial year 2007-08 is \$41.8 million including \$23.3 million for enforcement and \$18.5 million for health promotion. Manpower of TCO will be increased from 66 in 2006-07 to 109 in 2007-08. The number of TCO inspectors will be increased from 34 in 2006-07 to 71 in 2007-08.

Evaluation of the Implementation of the Statutory Smoking Prohibition

15. Over the past five months, implementation of the statutory smoking ban has been generally smooth, except for isolated cases of violation. A very large part the public including smokers have shown appreciation of the statutory smoking ban and voluntary compliance remains by and large the established norm. For the black-spots where repeated violations of the statutory smoking prohibition are noticed, TCO would continue its targeted enforcement actions. Separately, we will also conduct surveys to measure public knowledge and sentiment about the smoking ban as well as to monitor the prevalence of smoking in Hong Kong.

PROPOSED FIXED PENALTY SYSTEM FOR SMOKING OFFENCE

Background

16. During the discussion of the Smoking (Public Health) Amendment Bill 2005 in the Bills Committee, the Administration undertook to design and put in place a fixed penalty system for the offence of smoking in a statutory no-smoking area. After the passage of the Smoking (Public Health) Amendment Bill 2005, we have given detailed consideration to the design of

such a system. Our proposal is outlined in paragraphs 17 to 24.

Proposal for a Fixed Penalty System

17. Under the Ordinance, any person who contravenes the statutory smoking prohibition by smoking in a statutory no smoking area is liable on summary conviction to a maximum fine of \$5,000. Under the proposed FPS, a person who is believed, by a law enforcement officer, to be contravening or have contravened the statutory smoking prohibition under the Ordinance, may discharge his liability for conviction of the respective offences by payment of a fixed penalty. The proposed legal framework and practical procedures would model on similar FPSs for other minor offences under other Ordinances, especially that for littering (c.f. Fixed Penalty (Public Cleanliness Offences) Ordinance, Cap. 570).

Penalty Level

18. The penalty under the FPS should be set at a level sufficient to achieve the desired deterrent effect without arousing too much public objection. The actual level of penalty for the 211 cases of smoking offence imposed by the court since 1 January 2007 ranges from \$200 to \$1,500 with an average of \$700. We propose to fix the penalty level at \$1,500. This is comparable to the high end of the penalty levels meted out by the Courts and is on par with public cleanliness offences which equally have public health implications.

Enforcement Authorities and Officers

19. Under the proposed FPS for smoking offences, TCO will remain the leading enforcement authority to be empowered to issue fixed penalty tickets in **all** statutory no smoking areas. To cater for public venues managed by government departments where a relatively higher volume of enforcement actions is expected, we propose that the following government departments are also to be vested with enforcement power under the proposed FPS in respect of those statutory no smoking areas in public venues under their management –

Enforcement Department	Relevant Statutory No Smoking Areas
Leisure and Cultural Services Department (LCSD)	Public bathing beaches, public pleasure grounds, public swimming pools, stadiums and indoor areas of other public facilities under the management of LCSD
Food and Environmental Hygiene Department (FEHD)	Indoor areas of public markets under the management of FEHD

Enforcement Department	Relevant Statutory No Smoking Areas
Housing Department (HD)	Statutory no smoking areas within public housing estates and premises under the management of HD

The government departments concerned may appoint in writing any public officer under their respective purview as enforcement officers under the proposed FPS.

20. It should be noted that these departments have their work priorities. Vesting them with enforcement authority under the proposed FPS is meant to complement the work of TCO in the above listed public premises. The enforcement of the smoking offence through issue of fixed penalty tickets will form part of their management work, but will not overtake their current work priorities and is subject to the feasibility of manpower deployment of the departments concerned.

Proposed Fixed Penalty Proceedings

21. If an enforcement officer has reason to believe that a person is contravening or has contravened the statutory smoking prohibition under the Ordinance, he may give the person a notice in prescribed form (“the fixed penalty notice”) offering him an opportunity to discharge his liability to conviction for that offence by payment of the fixed penalty. For the purpose of taking enforcement action, the officer may require the person to whom the notice is to be given to supply his name, address and contact telephone number and produce proof of identity for inspection. Failure to comply with this requirement to give the required personal information will be an offence and that the giving of false information in the circumstances will also be an offence.

22. A person who has received a fixed penalty notice may pay the full amount of the fixed penalty shown in the notice to discharge his liability for the smoking offence, and he shall then not be liable to be prosecuted or convicted for the offence under the Ordinance. The fixed penalty ticket will also contain information on how he should proceed if he wishes to dispute liability. If he does not pay the fixed penalty notice within a specified period, he will be given a reminder and be reminded that if he wishes to dispute liability for the offence, he should notify the authority in writing. Provisions will be made for an application to be made to the court for payment of fixed penalty together with the costs if the fixed penalty has not been paid despite reminder and that the person concerned has not given any notification that he wishes to dispute liability. We are also considering imposing an additional penalty in these cases (as in the case of public cleanliness offence).

23. A person who has received a fixed penalty notice and has notified his wish to dispute liability will be issued with a summons for the smoking offence and the case will be heard before a magistrate. If he offers no defence or a defence which is frivolous or vexatious, we will consider proposing an additional penalty to be imposed (as in the case of public cleanliness offence) on top of any penalty and cost which may be awarded upon his conviction. However, at any time before the magistrate hears the case, the person concerned may still discharge his liability for the smoking offence by duly paying the full amount of the fixed penalty together with the additional penalty.

24. To tackle the case of repeated offenders (i.e. those who have been issued fixed penalty or convicted of smoking offence a number of times), subject to resource requirements and practical feasibility, we are exploring the possibility of introducing a mechanism whereby any fixed penalty notice issued to them would be withdrawn and the summary conviction proceedings would be initiated by issuing a summons instead. This is to enable us to prosecute repeated offenders in the court and for the court to award an appropriate penalty to such persons with regard to the maximum fine under the Ordinance.

Progress and Timetable

25. We have completed a preliminary round of consultations with relevant government bureaux and departments and are currently making preparations for the drafting of the primary legislation to provide for the proposed fixed penalty system for smoking offence. We currently aim to introduce the bill to this Council by the end 2007 / early 2008 subject to availability of legislative timeslots, smooth progress in drafting and resolution of other related practical matters relevant to the proposed fixed penalty system.

26. The Department of Health has also been liaising with relevant government departments and the Judiciary to explore and prepare for the necessary practical procedures and information system to support the issue of fixed penalty notices and related follow-up actions. It is estimated that some 10 months would be needed to put in place the practical arrangements necessary for supporting the fixed penalty system after enactment of the primary legislation. Subject to the legislative progress, and smooth implementation of supporting arrangements, our current target is for the fixed penalty system to come into force by end 2008 / early 2009.

Health, Welfare and Food Bureau
May 2007

**Statutory No Smoking Areas Designated under
the Smoking (Public Health) Ordinance (Cap. 371)**

- ⊘ Any cinema, theatre or concert hall*
- ⊘ Any public lift*
- ⊘ Any escalator
- ⊘ Any amusement game centre*
- ⊘ Any child care centre
- ⊘ Any school (including kindergartens, primary schools, secondary schools, universities and other tertiary institutes)
- ⊘ Any approved institution (means an approved institution under the Probation of Offenders Ordinance, namely the Shatin Boys' Home and Fanling Girls' Home)
- ⊘ Any place of detention (means a place of detention under the Immigration (Places of Detention) Order, namely The Chuk Yuen Children's Reception Centre, The Ma Tau Wai Girls' Home, The Begonia Road Boys' Home, The Pui Yin Juvenile Home, Pui Chi Boys' Home and Tuen Mun Children and Juvenile Home; or a place of detention under the Juvenile Offenders Ordinance)
- ⊘ Any place of refuge (means a place of refuge under the Protection of Children and Juveniles Ordinance, namely Ma Tau Wai Girls' Home, Pui Chi Boys' Home and Wing Lung Bank Golden Jubilee Sheltered Workshop & Hostel)
- ⊘ Any reformatory school (means a reformatory school under the Reformatory Schools Ordinance, namely O Pui Shan Boys' Home)
- ⊘ Any hospital (both public and private hospitals)
- ⊘ Any maternity home
- ⊘ Any public pleasure ground other than a bathing beach gazetted under the Fourth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132) (except for designated smoking areas within those pleasure grounds)
- ⊘ The following areas within any bathing beach-
 - any part of the waters set aside for the sole use of swimmers under section 10 of the Bathing Beaches Regulation (Cap. 132 sub. leg. E) (which includes any beach raft and any other thing on the surface of or above those waters);
 - the shore covered with sand or stones, together with any structure, showering facilities or natural feature on such shore; and
 - any area specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap. 132) to be used as a barbecue area,

camp site or children's play area.

- ⊗ The following areas within any public swimming pool-
 - any swimming pool;
 - any sidewalk immediately adjacent to the swimming pool;
 - any diving board or other apparatus or facility adjoining the swimming pool; and
 - any spectator stand.
- ⊗ The following areas within the Hong Kong Stadium and the Mongkok Stadium -
 - any pitch;
 - any running track;
 - any sidewalk immediately adjacent to the pitch or running track; and
 - any spectator stand.
- ⊗ The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap. 208).
- ⊗ An indoor area in-
 - any shop, department store* or shopping mall*;
 - any market (whether publicly or privately operated or managed);
 - any supermarket*;
 - any bank*;
 - any restaurant premises;
 - any bar;
 - any karaoke establishment;
 - any mahjong-tin kau premises;
 - any bathhouse;
 - any massage establishment;
 - any residential care home;
 - any treatment centre; or
 - any communal quarters
- ⊗ **An indoor area in a workplace or public place** to the extent that it is not an area described in any other items above.

Note: Those areas with an asterisk (*) are no smoking areas designated before the Amendment Ordinance 2006. The smoking ban in most newly designated no smoking areas takes effect **from 1 January 2007**.¹

¹ Six types of "qualified establishments", namely nightclubs, commercial bathhouses, massage establishments, mahjong parlours, designated mahjong rooms in clubs and certain bars may implement the smoking ban by 1 July 2009 the latest. These establishments, however, would have to restrict people who are aged under 18 from entering their premises, comply with other conditions which are set to ensure that they are genuinely in one of these six businesses, and notify the Department of Health during the interim. However, this transitional arrangement does not apply to any premises that are under the management and control of the government.