

For information
20 April 2009

Legislative Council Panel on Health Services

**Implementation of Fixed Penalty System for Smoking Offences and
Designation of No Smoking Areas at Public Transport Interchanges**

Purpose

This paper briefs Members of the progress in implementing the fixed penalty system for smoking offences under the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) and the plan to designate no smoking areas (NSAs) at public transport interchanges (PTIs) under the Smoking (Public Health) Ordinance (Cap.371).

Implementation of Fixed Penalty System for Smoking Offences

Background

2. The Fixed Penalty (Smoking Offences) Ordinance (Cap.600) was passed by this Council in July 2008. The Ordinance provides for a fixed penalty system under which any person who contravenes the statutory smoking ban as stipulated under section 3(2) and section 4(1) of the Smoking (Public Health) Ordinance (Cap.371), i.e. smoking or carrying a lighted cigarette, cigar or pipe at statutory NSAs and public transport carriers, is liable to pay a fixed penalty of HK\$1,500. This penalty level is on par with that for public cleanliness offences.

Implementation

3. Since the passage of the Fixed Penalty (Smoking Offences) Ordinance by this Council in July 2008, the Tobacco Control Office (TCO) of the Department of Health (DH) has been working in close collaboration with the Food and Environmental Hygiene Department (FEHD), Housing Department (HD), Leisure and Cultural Services Department (LCSD) and the Police (involved in carrying out enforcement duties), the Treasury (involved in processing payments) and the Judiciary

(involved in judicial procedures) to put in place the necessary administrative infrastructure and arrangements for implementing the fixed penalty system (FPS).

4. These include setting up the Fixed Penalty Information System (FPIS), a computer system which interfaces with those systems of the payment collecting agencies, Judiciary and Treasury, and enables the recording, processing and tracking fixed penalty notices and payments, as well as initiation of legal proceedings in cases where the offender disputes liability or defaults payments. The design and installation of the software and hardware have just been completed. The FPIS is now undergoing user acceptance tests and will be ready for operation by August 2009.

5. We have also agreed with DH and other enforcement departments the list of public officers who would be entrusted with the authority to take enforcement actions under the Ordinance (see *Annex A*), and the enforcement departments have consulted their respective staff on the arrangements. DH has also drawn up enforcement guidelines in consultation with other enforcement departments to facilitate the public officers' discharge of enforcement duties under the Ordinance. TCO has started organizing training programme for the relevant staff of the enforcement agencies on the legal requirements and practical procedures of enforcement.

6. TCO officers will remain the leading enforcement agency under the fixed penalty system, and are empowered to issue FPNs in all statutory no smoking areas. Apart from being venue managers of designated no smoking areas in public venues they manage and empowered by the Smoking (Public Health) Ordinance, public officers of FEHD, LCSD and HD authorised to take enforcement actions will complement TCO's enforcement work. While enforcement under Cap. 600 will form part of the routine management duties of these departments, it will not overtake their current work priorities and is subject to the feasibility of manpower deployment of the departments concerned.

Publicity

7. To promote public awareness of the FPS well in advance, TCO plans to launch a series of publicity activities starting about one month before the actual commencement of the fixed penalty system. These will include press/media interviews, broadcast of announcements in public interest in radio and television, display and distribution of relevant posters, banners and pamphlets. Other

enforcement departments will also assist in placing the publicity materials on the FPS in venues under their management to enhance awareness and encourage compliance.

Commencement

8. To put the FPS into effect, we would introduce two pieces of subsidiary legislation into this Council within April 2009. The first prescribes the fixed penalty notices to be served to the offenders and certificates to be produced to magistrates as evidence of non-payment of the fixed penalty. The second specifies the list of public officers authorized to enforce the Fixed Penalty (Smoking Offences) Ordinance. According to our present schedule, subject to the passing of the subsidiary legislation, we aim to commence operation of the FPS on 1 September 2009.

9. We believe that the implementation of the FPS will help strengthen the deterrent effect and encourage compliance with the smoking ban. With the streamlined enforcement process, operational efficiency in enforcement and handling prosecution of cases will be enhanced. As such, more efforts may be directed to enforcement actions for offences under the Smoking (Public Health) Ordinance outlined in paragraphs 11 and 12 below.

Designation of No Smoking Areas at Public Transport Interchanges

Background

10. The amendments to the Smoking (Public Health) Ordinance (Cap. 371) passed by this Council in October 2006 have, inter alia, significantly expanded the statutory NSAs under the Ordinance to cover all indoor workplaces and public places, schools, hospitals, universities, and certain outdoor areas such as public parks, swimming pools, bathing beaches and stadiums under the management of LCSD.¹ Section 3 (1AB) of Cap.371 empowers the Director of Health to, by notice published in Gazette, designate as an NSA the whole or a part of -

- (a) any area that consists of the termini of 2 or more modes of public transport and is used for effecting and facilitating interchange between them; or

¹ Six types of qualified establishments were temporarily exempted from the smoking ban until 30 June 2009. There are also a few other limited exceptions including tasting rooms in cigar shops, hotel rooms, smoking rooms at the airport, and smoking facilities in correctional institutions. Limited smoking areas are also allowed in LCSD's leisure facilities.

- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).

These areas are generally referred to as public transport interchanges and bus termini (or PTIs for short).

11. As the Administration explained to this Council previously, our strategy for implementing the Smoking (Public Health) Ordinance especially the smoking ban in the enlarged NSAs is to take a gradual and step-by-step approach. Since 2006, we have carried out the following measures: appointed and vested tobacco control inspectors with inspection and enforcement authority under the Ordinance since 27 October 2006; effected the smoking ban in most indoor workplace and public places as well as outdoor leisure areas since 1 January 2007; effected the new graphic warning and packaging restrictions on tobacco products since 27 October 2007; effected the prohibition of display of tobacco advertisements at retail dealers with two employees or less since 1 November 2007; introduced the legislation for a fixed penalty system for smoking offences into this Council in February 2008.

12. Looking forward, we will implement the smoking ban in six types of qualified establishments (qualified bars, qualified clubs, qualified nightclubs, bathhouses, massage establishment, and mahjong-tin kau premises) on 1 July 2009; commence operation of the fixed penalty system on 1 September 2009; and effect the prohibition of display of tobacco advertisements at hawker stalls from 1 November 2009 onwards. The Administration has also undertaken to designate NSAs at PTIs by phases, after putting in place the fixed penalty system, to further protect the public from exposure to second-hand smoke at these PTIs. In particular, we will start with designating NSAs in covered PTIs (i.e. PTIs covered by superstructures above) in the first phase, and, subject to the progress of implementation of smoking ban in these PTIs, proceed to designate NSAs in open-air PTIs.

Designation

13. Upon consultation with the relevant government departments, TCO has identified some 220 PTIs throughout the territory which may potentially fulfil the criteria for designation as NSAs under Section 3(1AB) of the Smoking (Public Health) Ordinance as set out in paragraph 10 above. Amongst them, the TCO has, after site inspection and on legal advice, identified 91 covered PTIs which fulfil the criteria for

designation as NSAs as listed at *Annex B* for reference.

14. Among the 91 covered PTIs, 43 also fall within the definition of “indoor”² under the Ordinance and are thus already NSAs where smoking is prohibited at present. In other words, we would just need to designate NSAs in the remaining 48 PTIs. Specifically, our intention is that the boarding and waiting areas of the PTIs, as well as areas passengers will pass by in the course of accessing and interchanging between different modes of public transport should be designated as statutory NSAs. As the physical conditions of each PTI vary, the exact scope of NSA in each PTI will be delineated by reference to a gazette plan (a sample is attached at *Annex C*).

15. Given the diverse ownership and management responsibility of these PTIs at present, the production of plans for individual PTIs will take much time and effort, including liaison with relevant property owners and consultation with relevant government departments such as the Buildings Department and Lands Department. Site inspections by TCO will be carried out to ensure that the gazette plans are in line with our intended scope of statutory NSA as set out in paragraph 14 above.

16. Our current plan is to designate statutory NSAs at the 48 covered PTIs which are not subject to smoking ban at present as the first phase on 1 September 2009, the same target date for implementing the FPS as set out in para.8. We consider that implementing both initiatives together will facilitate compliance as well as enforcement of the new smoking ban at the PTIs. Subject to satisfactory implementation of the smoking ban in this first phase of PTIs designated as NSAs, we will proceed to prepare for the designation of the some 120 open-air potential PTIs in subsequent phases. We are planning to start preparation for the next phase of designation in the beginning of 2010 and to effect the designation within 2010.

Consultation and Publicity

17. Starting from May this year, we will consult the respective District Councils on the designation of NSAs at PTIs within their districts including the implementation plan. All plans of the PTIs designated will be published in the

² According to section 2 of the Smoking (Public Health) Ordinance, “Indoor” is defined as –

- (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
- (b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door.

Gazette, displayed at TCO as well as posted on TCO's website for public inspection, well before the designation takes effect.

18. To facilitate implementation of the smoking ban at the PTIs, TCO has been in contact with the venue managers of all covered PTIs to prepare for the designation of NSAs therein. TCO will liaise closely with them on arrangements for putting up no smoking signs and publicity materials including the delineation of the NSAs at suitable locations in and near the PTIs with a view to ensuring public knowledge about the NSAs therein. TCO will also provide training for relevant venue managers to assist in the smooth implementation of the smoking ban. Promotional materials will also be distributed to public transport operators including bus companies and associations of public light bus and taxi to promote compliance by the trade and passengers.

19. In addition, TCO will carry out territory-wide publicity activities starting from about one month before implementation of smoking ban in PTIs to inform the public of the smoking ban in PTIs and to promote compliance. The publicity programme will include announcements in public interest on both radio and television, as well as the display and distribution of posters, pamphlets, stickers, and other publicity materials to relevant venue managers and the public. TCO will take steps to ensure that no-smoking banners and signs are displayed at conspicuous locations within the NSAs of the PTIs to remind the public of the application of the smoking ban. The gazetted plans which show the boundary of the NSA of the PTIs will also be posted at prominent positions such as the main entrances and exits of the PTIs for public information.

20. The same publicity measures will be taken in respect of both the 48 covered PTIs to be designated as NSAs as well as the 43 indoor PTIs already subject to smoking ban, so as to convey a consistent message to the public on the smoking ban in all covered PTIs.

Enforcement and Manpower of Tobacco Control Office

21. To cope with the additional workload arising from enforcing the Smoking (Public Health) Ordinance and the Fixed Penalty (Smoking Offences) Ordinance, 15 civil service posts will be created and 18 non-civil service contract positions will be converted to civil service posts in 2009-10. The provision for carrying out enforcement duties by TCO in 2009-10 will be increased to \$28 million,

from a revised estimate of \$24.9 million in 2008-09. With these additional resources, TCO will strengthen its enforcement actions to better protect the public from the harm of second-hand smoke.

Advice Sought

22. Members are invited to note the contents of this paper.

Food and Health Bureau

April 2009

**Public Officers to be Entrusted with
Authority to Take Enforcement Actions under
Fixed Penalty (Smoking Offences) Ordinance**

Department	Public Officer
Hong Kong Police Force	Police Officer
Department of Health	Inspectors appointed by the Secretary for Food and Health under Section 15F of the Smoking (Public Health) Ordinance
Food and Environmental Hygiene Department	Senior Health Inspector (Market Management) Senior Health Inspector (Hawkers and Markets) Senior Health Inspector (Hawkers) Health Inspector (Market Management) Health Inspector (Hawkers and Markets) Health Inspector (Hawker Casework) Principal Hawker Control Officer (Hawker Control Team) Chief Hawker Control Officer (Hawker Control Team) Senior Hawker Control Officer (Hawker Control Team) Hawker Control Officer (Hawker Control Team) Assistant Hawker Control Officer (Hawker Control Team) Overseer (Markets) Foreman (Markets) Market Assistant
Housing Department	Housing Manager Assistant Housing Manager Housing Officer
Leisure and Cultural Services Department	Amenities Officer I Amenities Officer II Senior Amenities Assistant Amenities Assistant I Amenities Assistant II Amenities Assistant III

Department**Public Officer**

Chief Librarian
Senior Librarian
Librarian
Assistant Librarian
Chief Manager, Cultural Services
Senior Manager, Cultural Services
Manager, Cultural Services
Assistant Manager, Cultural Services
Assistant Recreation and Sport Officer II
Chief Leisure Services Manager
Senior Leisure Services Manager
Leisure Services Manager
Assistant Leisure Services Manager I
Assistant Leisure Services Manager II

List of Covered Public Transport Interchanges/Bus Termini (PTIs)

Group I: Indoor* PTIs

No.	District	English Name	Chinese Name
1	C&W	Admiralty Station (East) Bus Terminus	金鐘站(東)巴士總站
2	C&W	Central (Hong Kong Station) PTI	中環(香港站)公共運輸交匯處
3	C&W	The Peak Public Transport Terminus	山頂公共運輸總站
4	E	Siu Sai Wan (Island Resort) PTI	小西灣(藍灣半島)公共運輸交匯處
5	E	Tin Hau Station PTI	天后站公共運輸交匯處
6	Is	Tung Chung Station Bus Terminus	東涌站公共運輸交匯處
7	K&T	Kwai Chung Estate PTI	葵涌邨公共運輸交匯處
8	KC	Laguna Verde PTT	海逸豪園交通交匯處
9	KC	Whampoa Garden PTI	黃埔花園交通交匯處
10	KT	Kowloon Bay PTI	九龍灣交通交匯處
11	KT	Lam Tin Station PTI	藍田站交通交匯處
12	KT	Ping Tin Bus & GMB Terminus	平田巴士及小巴總站
13	KT	Po Tat Estate Public Transport Terminus	寶達邨公共運輸交匯處
14	N	Luen Wo Hui PTI	聯和墟公共交通總站
15	S	Ap Lei Chau (South Horizons) PTI	海怡半島公共運輸交匯處
16	S	Cyberport PTI	數碼港公共運輸交匯處
17	S	Shek Pai Wan Estate PTI	石排灣公共運輸交匯處
18	SK	Hang Hau Station PTI	坑口站公共運輸交匯處
19	SK	Po Lam PTI	寶琳公共運輸交匯處
20	SK	Sheung Tak Public Transport Terminus	尚德公共交通總站
21	SK	Tiu Keng Leng Station PTI	調景嶺站公共運輸交匯處
22	SK	Tseung Kwan O Station PTI	將軍澳站公共運輸交匯處
23	SSP	Cheung Sha Wan Plaza PTI	長沙灣廣場交通交匯處
24	SSP	Hoi Lai Estate PTI	海麗邨巴士總站
25	SSP	Kowloon Tong (Festival Walk) PTI	九龍塘(又一城)交通交匯處

* According to section 2 of the Smoking (Public Health) Ordinance, “indoor” means –
 (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
 (b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door.

No.	District	English Name	Chinese Name
26	SSP	Yen Chow Street PTI	欽州街交通交匯處
27	ST	Mei Tin Estate PTI	美田邨公共運輸交匯處
28	ST	Tai Wai Station PTI	大圍站公共運輸交匯處
29	ST	Wu Kai Sha Station PTI	烏溪沙站公共運輸交匯處
30	ST	Yu Chui Court Public Transport Interchange	愉翠苑公共交通交匯處
31	TM	Tuen Mun Central Bus Station	屯門中心巴士總站
32	TW	Bayview Garden Bus Terminus	灣景花園巴士總站
33	TW	Lei Muk Shue Estate Bus Terminus	梨木樹邨公共運輸交匯處
34	TW	Nina Tower Bus Terminus	如心廣場巴士總站
35	TW	Tsuen Wan West Station PTI	荃灣西站公共運輸交匯處
36	WTS	Diamond Hill Station PTI	鑽石山站公共運輸交匯處
37	WTS	Tsz Wan Shan (Central) Bus Terminus	慈雲山(中)巴士總站
38	YL	Tin Heng Bus Terminus	天恆邨公共運輸交匯處
39	YTM	China Ferry Terminal PTI	中港城公共運輸交匯處
40	YTM	Kowloon Station PTI	九龍機鐵站交通交匯處
41	YTM	Olympic Station PTI	奧運站交通交匯處
42	YTM	Park Avenue PTI	柏景灣交通交匯處
43	YTM	Tsim Sha Tsui East Bus Terminus	尖沙咀東巴士總站

Group II: Covered but not indoor PTIs

No.	District	English Name	Chinese Name
1	C&W	Admiralty Station (West) Bus Terminus	金鐘站(西)巴士總站
2	C&W	Central (Exchange Square) Bus Terminus	中環(交易廣場)巴士總站
3	E	Sai Wan Ho (Grand Promenade) PTI	西灣河(嘉亨灣)公共運輸交匯處
4	Is	Yat Tung Estate PTT	逸東邨公共交通總站
5	K&T	Cheung Hong Bus Terminus	長康巴士總站
6	K&T	Cheung On Bus Terminus	長安巴士總站
7	K&T	Kau Wa Keng PTI	九華徑交通交匯處
8	K&T	Kwai Fong Station Bus Terminus	葵芳站巴士總站
9	K&T	Kwai Hing Station Bus Terminus	葵興站巴士總站
10	K&T	Kwai Shing (East) Bus Terminus	葵盛東巴士總站
11	K&T	Kwai Shing Central Bus Terminus	葵盛中巴士總站
12	K&T	Shek Lei (Tai Loong Street) Bus Terminus	石籬(大隴街)巴士總站
13	K&T	Tsing Yi Estate Bus Terminus	青衣邨巴士總站
14	KC	Kowloon Tong (Suffolk Road) PTI	九龍塘(沙福道)公共交通交匯處
15	KT	Laguna City PTI	麗港城交通交匯處
16	KT	Ping Shek PTI	坪石公共運輸交匯處
17	KT	Telford Plaza Transport Interchange	德福廣場公共運輸交匯處
18	N	Choi Yuen Bus Terminus	彩園巴士總站
19	N	Sheung Shui Bus Terminus	上水巴士總站
20	N	Tin Ping Estate Bus Terminus	天平邨巴士總站
21	S	Shum Wan Road PTI	深灣道公共運輸總站
22	S	Tin Wan Estate PTI	田灣公共運輸交匯處
23	SK	Tsui Lam Bus Terminus	翠林巴士總站
24	ST	Ma On Shan Town Centre PTI	馬鞍山市中心公共交通總站
25	ST	Sha Tin Central Bus Terminus	沙田市中心巴士總站
26	TM	Fu Tai Estate Bus Terminus	富泰邨巴士總站
27	TM	Leung King Bus Terminus	良景邨巴士總站
28	TM	Lung Mun Oasis Bus Terminus	龍門居巴士總站
29	TM	Po Tin Bus Terminus	寶田巴士總站
30	TM	Sam Shing Bus Terminus	三聖巴士總站
31	TM	Tuen Mun Pier Head Bus Terminus	屯門碼頭巴士總站
32	TP	Fu Shin Bus Terminus	富善邨巴士總站
33	TP	Kwong Fuk Bus Terminus	廣福巴士總站
34	TP	Tai Po Market Station Bus Terminus	大埔墟站巴士總站

No.	District	English Name	Chinese Name
35	TP	Tai Wo Bus Terminus	太和巴士總站
36	TW	Bellagio PTI	碧堤半島公共運輸交匯處
37	TW	Discovery Park PTI	愉景新城交通交匯處
38	TW	Riveria Garden PTI	海濱花園公共運輸交匯處
39	TW	Tsuen Wan Station PTI	荃灣站公共運輸交匯處
40	WTS	Choi Wan Bus Terminus Bus Terminus	彩雲巴士總站
41	WTS	Lok Fu Bus Terminus	樂富巴士總站
42	WTS	Tsz Wan Shan (North) Bus Terminus	慈雲山(北)巴士總站
43	YL	Long Ping Estate Bus Terminus	朗屏邨巴士總站
44	YL	Tin Fu Court Bus Terminus	天富苑巴士總站
45	YL	Tin Shui Wai Town Centre PTI	天水圍市中心公共運輸交匯處
46	YL	Tin Yan Estate PTI	天恩邨公共運輸交匯處
47	YTM	Island Harbourview PTI	大角咀(維港灣)交通交匯處
48	YTM	Tsim Sha Tsui East (Mody Road) Bus Terminus	尖沙咀東(麼地道)巴士總站

Abbreviation

C&W	Central and Western
E	Eastern
Is	Islands
K&T	Kwai Tsing
KC	Kowloon City
KT	Kwun Tong
N	North
S	Southern
SK	Sai Kung
SSP	Sham Shui Po
ST	Sha Tin
TM	Tuen Mun
TP	Tai Po
TW	Tsuen Wan
WC	Wan Chai
WTS	Wong Tai Sin
YL	Yuen Long
YTM	Yau Tsim Mong

樂富巴士總站指定禁止吸煙區示意圖

Plan of Designated No Smoking Area at Lok Fu Bus Terminus

Annex C

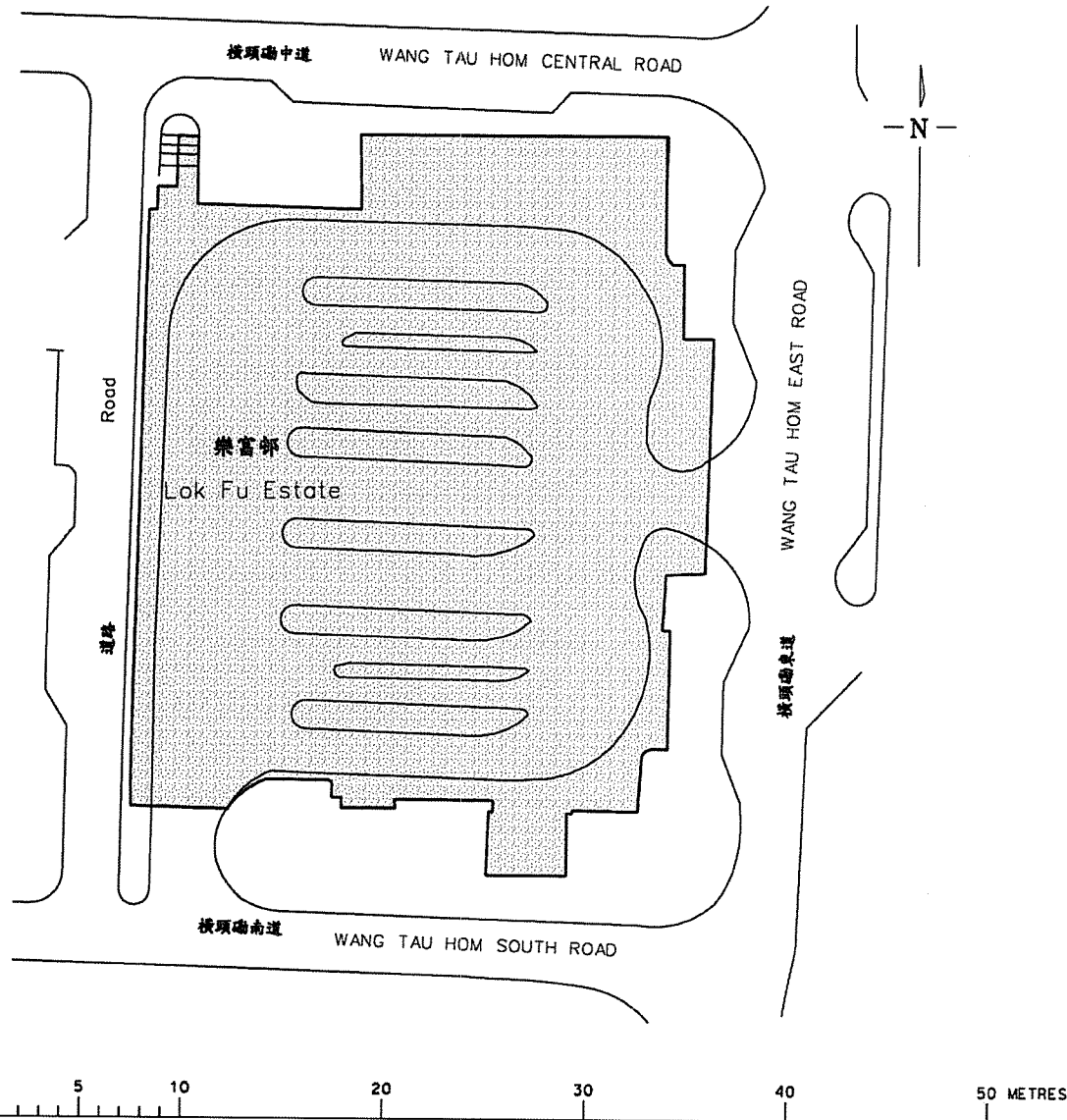


圖 例

LEGEND



禁止吸煙區

No Smoking Area

吸煙 (公眾衛生) 條例 (第 371 章)
Smoking (Public Health) Ordinance (CAP 371)

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