

立法會
Legislative Council

LC Paper No. CB(2)1083/15-16

(These minutes have been
seen by the Administration)

Ref : CB2/SS/3/15

**Subcommittee on Smoking (Public Health) Ordinance
(Amendment of Schedule 2) Order 2015**

**Minutes of the third meeting
held on Tuesday, 16 February 2016, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip
Hon James TIEN Pei-chun, GBS, JP
Hon KWOK Wai-keung

Members absent : Hon WONG Ting-kwong, SBS, JP
Dr Hon KWOK Ka-ki
Dr Hon Helena WONG Pik-wan

Public Officers attending : Professor Sophia CHAN Siu-chee, JP
Under Secretary for Food and Health
Food and Health Bureau

Ms Wendy AU Wan-sze
Deputy Secretary for Food and Health (Health) 2 (Acting)
Food and Health Bureau

Dr Sarah CHOI Mei-yee, JP
Assistant Director of Health (Special Health Services)
Department of Health

Dr Jeff LEE Pui-man
Head (Tobacco Control Office)
Department of Health

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Mr Alvin CHUI
Assistant Legal Adviser 3

Ms Priscilla LAU
Council Secretary (2) 5

Ms Louisa YU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration

[File Ref: L.N. 237 of 2015, Legislative Council Brief issued by the Food and Health Bureau and the Department of Health in December 2015, LC Paper Nos. CB(2)564/15-16(02), CB(2)719/15-16(01) to (02) and CB(2)875/15-16(01)]

The Subcommittee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

- Admin 2. The Administration was requested to -
- (a) consider a member's suggestion of deferring the commencement date of the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015, which was currently set as 31 March 2016, through the gazettal of another order to such effect;
 - (b) in respect of some members' suggestion of providing an area at the Shing Mun Tunnels Bus Interchange (Tsuen Wan bound) where smoking was not prohibited,
 - (i) provide for members' reference the replies given by the Transport Department ("TD") and other Government departments concerned, if any, in response to the Food and Health Bureau's enquiry on the feasibility of the suggestion as referred to in paragraph 4(a) of LC Paper No. CB(2)875/15-16(01); and
 - (ii) provide the advice of the relevant Government departments on the works required to enable the provision of an area at the

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above Bus Interchange, say, by widening the pavement along the site, for the purpose of allowing smokers to smoke therein; and

- (c) in respect of the Cross-Harbour Tunnel Bus Interchange,
 - (i) advise the feasibility of setting up a separately ventilated smoking room adjacent to the Customer Service Centre of the Kowloon Motor Bus Company Limited located at the Cross-Harbour Tunnel Bus Interchange; and
 - (ii) advise the details and schedule of the works to be carried out by TD in the adjoining facilities of the Cross Harbour Tunnel Bus Interchange for the purpose of facilitating the access to public walkways by the public as referred to in paragraph 4(b) of LC Paper No. CB(2)875/15-16(01).

- Admin 3. The Administration was requested to revert to the Panel on Health Services on the outcome of the review on the implementation of smoking ban at the eight bus interchanges at eight tunnel portal areas under L.N. 237.

II. Any other business

4. Members agreed that the Subcommittee should hold a further meeting to discuss with the relevant Government departments, including, among others, TD, on the various options put forward by members for providing, at the Shing Mun Tunnels Bus Interchange and the Cross-Harbour Tunnel Bus Interchange, areas where smoking was not prohibited that could balance the interests of smokers and non-smokers. The Chairman said that the Clerk would follow up with the Administration on the arrangements and members would be informed of the details in due course.

(Post-meeting note: With the concurrence of the Chairman, the fourth meeting of the Subcommittee has been scheduled for 15 March 2016 at 4:30 pm.)

5. There being no other business, the meeting ended at 9:51 am.

**Proceedings of the third meeting of the
Subcommittee on Smoking (Public Health) Ordinance
(Amendment of Schedule 2) Order 2015
on Tuesday, 16 February 2016, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000248 - 000531	Chairman ALA3	<p>At the Chairman's invitation, the advice of the Legal Adviser of the Subcommittee in response to an enquiry raised by Mr Albert CHAN at the meeting on 25 January 2016 that -</p> <p>(a) the commencement date of the Smoking (Public Health) Ordinance (Amendment of Schedule 2) Order 2015 (L.N. 237 of 2015) as gazetted was 31 March 2016;</p> <p>(b) an order could take effect from the date of publication in the Gazette of such order. Hence, the Administration could, if it so wished, at any time before 31 March 2016 publish another order in the Gazette to the effect that the commencement date of L.N. 237 would be deferred to a later date. Any such order was subject to the scrutiny of the Legislative Council under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) (i.e. the negative vetting procedure). The scrutiny period (including possible extension if practicable) was 28 days immediately following the day on which the order was tabled plus 21 days, or until the Council meeting immediately following the 21 days if there was no Council meeting on the 21st day; and</p> <p>(c) against the above, the expiration of the scrutiny period of any such order published by the Administration in the Gazette for the time being would be later than the date on which L.N. 237 was currently scheduled to commence into operation.</p>	
000532 - 001455	Chairman Admin Mr Albert CHAN	Briefing by the Administration on its paper entitled "The Government's response to the issues raised by the Subcommittee" [LC Paper No. CB(2)875/15-16(01)]	
001456 - 002136	Chairman Mr Albert CHAN Admin	<p>Mr Albert CHAN's view that the proposed smoking ban at the eight bus interchanges at eight tunnel portal areas as set out in L.N. 237 had failed to take into account the interests of smokers, who contributed a revenue of more than \$4 billion from tobacco duty each year; and his expression of disappointment that the Administration did not take heed of some members' call for providing, within a reasonable distance from the boarding areas of the Shing Mun Tunnels Bus Interchange and the Cross-Harbour Tunnel Bus Interchange, areas where smoking was not prohibited.</p> <p>The Administration's response that the tobacco control policy aimed at protecting public health, including both smokers and non-smokers. Under the current proposal, smokers could smoke outside the boundaries of the proposed new no smoking areas</p>	

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		<p>("NSAs") where smoking was not prohibited, with the exception of Shing Mun Tunnels Bus Interchange as available space was limited.</p> <p>Noting that the number of suggestions received by the Tobacco Control Office for imposing smoking ban at the Shing Mun Tunnels Bus Interchange was only around 70 from 2011 to September 2015, Mr Albert CHAN's strong view that it was not justifiable to impose a total smoking ban at that Bus Interchange which, in his view, deprived the right of smokers who were the minority.</p>	
002137 - 003021	Chairman Mr James TIEN Admin	<p>Mr James TIEN's view that as smoking was not legally prohibited, the Administration should allow smoking at the area around and under the stairs adjoining the elevated walkway at the Cross-Harbour Tunnel Bus Interchange (as illustrated on page 5 of the Annex of LC Paper No. CB(2)875/15-16(01)) which was suggested by some members, so as to respect the right of smokers and promote harmony in the community.</p> <p>The Administration's advice that the demarcations of NSAs at the Cross-Harbour Tunnel Bus Interchange had already taken into account factors such as physical configuration, pedestrian flow and boarding areas. It should also be noted that the Transport Department ("TD") was preparing for a series of projects in the adjoining facilities of the Cross Harbour Tunnel Bus Interchange, including installing barrier-free access facilities, with a view to facilitating the access to public walkways by the public, and hence the passenger flow in the area concerned might increase. The Food and Health Bureau ("FHB") would keep in view of the implementation of the proposed smoking ban after its coming into effect. It was expected that the review would be conducted 12 months after the implementation of the smoking ban.</p> <p>Mr James TIEN's view that the Administration should commit to allowing smoking at the above area after the completion of the works projects to be carried out by TD, instead of reviewing the arrangement after the implementation of the smoking ban.</p> <p>The Chairman's request for the Administration's to revert to the Panel on Health Services ("the Panel") on the outcome of the review.</p>	Admin
003022 - 003440	Chairman Mr Albert CHAN Mr James TIEN Admin	<p>At the request of Mr Albert CHAN, FHB undertook to provide the replies given by TD and other Government departments concerned, if any, in response to its enquiry on the feasibility of providing an area where smoking was not prohibited at the Shing Mun Tunnels Bus Interchange (Tsuen Wan bound) as referred to in paragraph 4(a) of LC Paper No. CB(2)875/15-16(01).</p> <p>Mr Albert CHAN and Mr James TIEN's view that the Subcommittee should hold a further meeting with representatives of the relevant Government departments, such as TD, to discuss the feasibility of members' suggestions to provide areas where smoking was not prohibited at the Shing Mun Tunnels Bus Interchange and the Cross-Harbour Tunnel Bus Interchange.</p>	Admin

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003441 - 003935	Chairman Mr Albert CHAN Admin	<p>Mr Albert CHAN's request for FHB to -</p> <p>(a) provide the advice of the relevant Government departments on the works required to enable the provision of an area at the Shing Mun Tunnels Bus Interchange (Tsuen Wan bound), say, by widening the pavement along the site, for the purpose of allowing smokers to smoke therein;</p> <p>(b) advise the feasibility of setting up a separately ventilated smoking room adjacent to the Customer Service Centre of the Kowloon Motor Bus Company Limited located at the Cross-Harbour Tunnel Bus Interchange; and</p> <p>(c) advise the details and schedule of the works to be carried out by TD in the adjoining facilities of the Cross-Harbour Tunnel Bus Interchange for the purpose of facilitating the access to public walkways by the public as referred to in paragraph 4(b) of LC Paper No. CB(2)875/15-16(01).</p>	Admin
003936 - 004527	Chairman Mr Albert CHAN Mr James TIEN	<p>Having taken into account that the designation of the eight bus interchanges at eight tunnel portal areas as NSAs which, according to the Administration, was an initial step for testing the feasibility of further expanding NSAs to other public facilities, would become a precedent, the Chairman's decision that the Subcommittee should hold a further meeting to examine with the Government departments concerned on the various options to provide at these eight bus interchanges areas where smoking was not prohibited that could balance the interests of smokers and non-smokers.</p> <p>On Mr James TIEN's concern as to whether the need to provide an area where smoking was not prohibited at each NSA with a view to balancing the interests of smokers and non-smokers should be a policy issue that should be discussed by the relevant Panels with the participation of more members, the Chairman's response that the discussion of the Subcommittee would confine to the arrangements for the eight bus interchanges in question. The Administration should revert to the Panel on the outcome of the review on the implementation of the currently proposed smoking ban, and consult the District Councils concerned on its future proposals to designate public facilities as NSAs.</p> <p>Mr Albert CHAN's remarks that it was the view of many members of the Subcommittee that the Administration should provide areas where smoking was not prohibited in the vicinity of the eight bus interchanges in question to provide convenience to smokers while balancing the protection of the interests of the non-smokers; and his call for the Administration to consider deferring the commencement date of L.N. 237, as a subsidiary legislation should only come into operation upon completion of the discussion by the Subcommittee.</p>	Admin
004528 - 005038	Chairman Admin Mr Albert CHAN	<p>On the Administration's advice that smokers could smoke outside the boundaries of the proposed new NSAs, with exception of the Shing Mun Tunnels Bus Interchange where available space was limited, Mr Albert CHAN's view that the areas at the Cross-Harbour Tunnel Bus Interchange where smokers could smoke,</p>	

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		which were far from the boarding area of the Bus Interchange, could not be regarded as a proposal that had safeguarded the interests of smokers.	
<i>Agenda item II: Any other business</i>			
005039 - 005220	Chairman Mr James TIEN Mr Albert CHAN	Arrangement for the next meeting Closing remarks	

Council Business Division 2
Legislative Council Secretariat
14 March 2016