

**Smoking (Public Health) (Amendment) Bill 2005  
Position Paper of  
Hong Kong Council on Smoking and Health**

**香港吸煙與健康委員會對  
《2005年吸煙(公眾衛生)(修訂)條例草案》意見書**

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HONG KONG COUNCIL ON SMOKING AND HEALTH 香港吸煙與健康委員會

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## **Smoking (Public Health) Ordinance (Amendment) Bills Committee 2005 Position Paper of the Hong Kong Council on Smoking and Health**

### **Hong Kong Council on Smoking and Health (The Council)**

The Council was first established in 1987. It is a statutory body vested with functions, as set out in the “Hong Kong Council on Smoking and Health Ordinance” (Cap. 389) to protect and improve the health of the community by: 1) informing and educating the public on the harm of smoking and its adverse effects on health; 2) conducting and coordinating research into the causes, prevention and cure of tobacco dependence; and 3) advising the Government, community health organizations or any public body on matters relating to smoking and health.

Under such a charter, the Council has taken up the role as an active player and commentator on all issues relating to tobacco control. We aim to act within our charter in response to changing local environment as it affects the promotion of tobacco and the epidemic caused by smoking.

### **Introduction**

The recommendations of the Council to proposed amendments of the Bill are based on three principles. The amended provisions shall:

1. further or speed up the protection of the public from risks of smoking and passive smoking;
2. ensure no one will be forced to make compromise in sacrificing their health through exposure to secondhand smoke at work; and
3. prohibit all kinds of, direct or indirect marketing and promotion of tobacco products via any format, channel and means by the tobacco industry.

### **Recommendations of the Council on the Bill**

#### Support Expansion of Statutory No Smoking Areas

Taking reference from global experience on banning smoking in public areas, the Council welcomes the proposal of expanding statutory no smoking areas to cover indoor areas of workplaces, more public areas, restaurants and bars to further protect the health of the public. Amongst these areas, indoor workplace is considered most important as the majority of employees in Hong Kong are spending at least 8 hours each day at work. Continuous exposure to secondhand smoke had been proven leading to serious public health problems. In fact, no one should be forced to be exposed to prolonged secondhand smoking and sacrifice their health because of work.

## Not to Limit “Indoor “ to “Substantially Enclosed”

The Bill proposed a new definition of “indoor” but the context is ambiguous. In particular, the Council wonders whether it is necessary to limit the meaning of “indoor” to “completely or substantially enclosed”. Overwhelming medical studies have confirmed that secondhand smoke is extremely poisonous and is the cause of various lethal diseases, including coronary heart disease and cancers. If the provision is designed to protect people from the exposure to secondhand smoke, “indoor” shall be defined as all covered areas irrespective of whether or not they have enclosing walls. Not only would this be consistent with the legislative intention, it makes implementation simpler, and avoids any ambiguity.

## Ventilation Does Not Work

There has been much discussion on the “ventilation solution” of secondhand smoke, mostly put forward by both the tobacco industry and the catering/hospitality industry saying that ventilation can solve indoor air pollution caused by smoking. But the fact is that, at present, no scientific evidence of any kind can support this claim.

In 2000, a panel of ventilation experts assembled by the US Federal Occupational Safety and Health Administration concluded that neither dilution ventilation, which aims to dilute contaminants with large volumes of air nor displacement ventilation, which is to release cold air at floor level with warmer contaminated air carried to the ceiling for extraction cannot remove the pollutants and prevent worker exposure. Experts pointed out that the removal of most second-hand smoke in a room with smokers would require ventilation at a level which would be impracticable and cause discomfort to customers and staff. It would still not make the air safe to breathe. There are no current engineering solutions to the problem of protecting workers (and others who are in the same airspace as smokers) from the gases and particulates emitted from the burning tip of a cigarette.

The Council strongly opposes the use of any ventilation system to replace the total smoking ban intervention.

## Smoking Room Not a Solution

There are also discussions of smoking rooms as an alternative. The Council objects any establishment of smoking rooms, because for fairness, the government needs to take care of the health of those working in the smoking rooms. Smoking booths are separately ventilated and extracted, and at negative pressure to the surrounding air, therefore shall protect those who are outside of the booth from secondhand smoke. But inside the booth exposures to secondhand smoke will be

more intense and unsafe for both smokers and non-smokers. There is no safe threshold for the harmful substances in tobacco smoke. The 1999 amendment to the ventilation standards issued by the American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE Standard 62-1999) did not accept that any level of smoking is compatible with the achievement of acceptable indoor air quality. The best option is to adopt smoke-free policies to ensure that indoor air quality is acceptable and safe.

Instead, the Council urges to ban all existing smoking rooms and suggests that smoking should only be allowed in the outdoor areas of the airport, such as balcony, in order to maintain a total smoke-free indoor public area. A totally smoke-free environment is in fact the most cost-effective, easiest to enforce and the lowest risk options to control secondhand smoke.

### Expansion of No Smoking Areas to Outdoor

The Council urges the government to further consider expanding no-smoking policy to outdoor and not enclosed public areas, such as bus terminals, parks and country parks. Taking bus terminal as example, public members in a queue are not able to avoid passive smoking if someone is smoking nearby.

## **Advertisement and Promotion of Tobacco Products**

### Display of Tobacco Advertisement

The Council welcomes the proposal of revoking the exemptions on the display of tobacco advertisement currently applicable to licensed hawker stalls and retail outlets with two employees or less. This exceptional arrangement was the biggest loophole of the last law amendment, leading to the emergence of many large light-boxes displaying tobacco advertisements in small shop premises throughout the most popular spots of territory. Because of this, the enacted provision in 1997 on prohibiting outdoor tobacco advertisements is never truly accomplished to present. The Council deeply regrets this outcome.

### Tobacco Sponsorship

In respect of tobacco sponsorship, the Bill proposed “to prohibit the appearance of a tobacco brand name in association with a non-tobacco product unless the name does not form the most prominent part of the advertisement”. This context of this provision is not only unclear but contains possible flaw. The Council is of the opinion that the government must amend this provision to totally prohibit the appearance of tobacco brand or name on any format of advertisements.

### Tobacco Brand extension

The amendment to the existing section 14(3) is providing an exception for tobacco trademarks on non-tobacco products, allowing the tobacco industry to make use of such to continue the mass promotion of their brands. These trademarks might even be connected to other lifestyle commodities. Measures to prohibit any possible tobacco brand extension must be given in this Bill.

## **Packaging and Labeling of Tobacco Products**

### Health Warnings

The Council strongly supports all the amendments on tobacco product package, but there are some weaknesses amongst many provisions. While the proposal to use pictorial warning is a quantum leap, the term “health warning” is unduly restrictive which limits the content of the messages that can be written on the packet or retail container. Instead, using the more flexible term “package message” is of great benefit simply because it provides more options of information for the health departments to write on the packet. Therefore, the Council suggests replacing “Health Warning” by “Package message” in this provision, in order to allow the administration listing on the tobacco product containers information which will benefit the public or what people concern.

The Council is of the opinion that the wordings used in the health warnings do not clearly point to the risk of smoking or passive smoking, and not as good as those best practices used worldwide. The first is by focusing on the act rather than the product. Rather than "Smoking causes lung cancer," the preferable approach is to focus on the defective product by stating: "Cigarettes cause lung cancer" etc. In addition, the use of conditional terminology such as “*may*” etc in some proposed warnings lessens the impact of messages. Taking these points together, the Council suggests the use of direct verb, such as “Cigarettes cause impotence” to replace “Smoking may cause impotence” etc.

### **Law Enforcement**

The Council is of the opinion that enforcement will not be sufficient if it is only enforced by the Department of Health and suggests that this should be carried out by various departments, and to adopt a simple ticket charge approach for offences. In addition, the government should place more promotion at cross-border and crowded public areas, such as posting more no-smoking signs in statutory no smoking areas and increase the area of the sign for easier spotting by the general public.

### **Exceptional Arrangements and Transitional Provisions**

It was noted that the adaptation periods of some provisions are extremely long, a

major flaw of the Bill not compatible with the current climate of the general public regarding this issue. Through continuous discussion of this issue over the last few years, the necessity and urgency of most amendment proposals are well known to the community, and the earlier these provisions come into operation, the better will be for the protection of the health of the public. In light of this, the Council is of the opinion that the proposed transitional arrangements are lengthy. For those amendments in which no major changes or new hard wares are needed, they should come into effect immediately after enactment. This should apply to those new designated areas such as restaurants, as only display of no-smoking signs are needed for this provision.

On the other hand, in respect of the packaging of tobacco products, the one year adaptation period is again too long and not necessary, because the tobacco industry will use this period for further lobbying, leading to problems instead of solutions. Many studies worldwide have pointed out that the use of descriptors such as “light” or “mild” on package of tobacco products are misleading, which will only seduce smokers taking more sticks. Immediate ban of these descriptors after enactment is necessary; otherwise the one year adaptation period will only provide the tobacco industry with longer time to produce such packets to the market.

### **.Comprehensive and Integrated Approach to Tobacco Control**

According to “Seeing Beneath the Surface – The Truth About the Tobacco Industry’s Youth Smoking Prevention Programmes” a publication of the World Health Organization in 2003, a comprehensive and integrated approach to tobacco control is necessary. To be effective in deterring the use of tobacco, increasing tobacco taxes and promoting smoking cessation should be hand-in-hand with the prohibition of all forms of tobacco advertising and promotions, and the implementation of smoke-free places by law.

### **Raising Tobacco Tax**

According to a report of the World Bank in 1999, the tax component of the price of a pack of cigarettes in Hong Kong, which is considered as a high- income city, should be at least two-thirds of the total retail cost, but the current tax amount is only a little more than half of the retail price. In light of this, the Council has kept on urging government to raise tobacco tax substantially and ensuring the annual rate increment higher than that of the inflation, because by doing this can effectively stop the increasing smoking rate of the youth as this is the group most sensitive to cigarette prices. Given the damages of smoking to the health of adolescent are still in the early stage, the government must do this. Therefore, the Council urges the government again to raise tobacco tax substantially for the sake of protecting our next generation from the harms of tobacco.

### **Most Resource for Smoking Cessation**

Overseas experiences regarding smoke-free policy indicate that once the legislative measures of banning smoking in public areas and workplaces came into operation, the smoking cessation rate and intention amongst smokers will increase. Unfortunately at present, the public health sector is only providing smoking cessation service in an office-hour operation format, which is obviously not enough to fulfill the need of smokers. The Council urges the government to increase funding to promote and strengthen the smoking cessation services in Hong Kong.

## **Conclusion**

On the whole, the Council is in favor of the Bill, in which most provisions have made appropriate improvements towards the right direction. But in order to plug possible loopholes and avoid misuse, further amendments are needed in some parts. China had rectified the Framework Control on Tobacco Control (FCTC) in late August. Being part of the mainland, Hong Kong should enact laws as soon as possible to fulfill the requirements stipulated in the treaty. In the coming days, the Council shall strengthen its promotional and educational work with main focus on reducing the use of tobacco. In view of the current thin resources for tobacco control in Hong Kong, we urge the government to take reference to overseas experience and set up a trust fund to raise such.

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