

LEGISLATIVE COUNCIL BRIEF

SMOKING (PUBLIC HEALTH) ORDINANCE (CAP. 371)

**SMOKING (PUBLIC HEALTH)
(DESIGNATION OF NO SMOKING AREAS)
(AMENDMENT) NOTICE 2019**

INTRODUCTION

Designations of no smoking areas (“NSA”) under the Smoking (Public Health) Ordinance (Cap. 371) (“Cap. 371”) have to be updated to reflect changes to the status and localities of public transport facilities.

2. On 25 September 2019, the Director of Health (“DoH”), in exercise of the power under section 3(1AB) of Cap. 371, made the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2019 (“the Amendment Notice”), at **Annex**, to –

- (a) designate three new PTFs as NSAs;
- (b) reflect the changes in four PTFs which are already designated as NSAs; and
- (c) remove one PTF from the Schedule to the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D) (“Cap. 371D”).

JUSTIFICATIONS

Background

3. To protect public health, it is the established policy of the Government to discourage smoking, contain the proliferation of tobacco use and protect the public from passive smoking. Over the past three decades, we have adopted a progressive and multi-pronged approach comprising legislation, publicity, education, enforcement, smoking cessation and taxation to step up tobacco control, having regard to the expectation and acceptance of the community.

Designation of NSAs

4. Cap. 371 and its subsidiary legislation provide a legislative framework for restricting the use, sale and promotion of tobacco products. Under Cap. 371, any person who smokes or carries a lighted cigarette, cigar or pipe in areas designated as NSAs (in contravention of section 3) or in public transport carriers (in contravention of section 4) commits an offence. Schedule 2 to the Ordinance specifies a number of designated NSAs and exempt areas. Section 3(1AB) of Cap. 371 empowers DoH to, by notice published in the Gazette, designate as an NSA the whole or a part of –

- (a) any area that consists of the termini of two or more modes of public transport and is used for effecting and facilitating interchange between them; or
- (b) any bus terminus of more than one specified route as defined in section 2 of the Public Bus Services Ordinance (Cap. 230).

5. Since 1 September 2009, the Government has designated NSAs in PTFs by phases for those areas identified as fulfilling the criteria as set out in section 3(1AB) of Cap. 371. There are currently over 240 PTFs designated as NSAs. The Tobacco and Alcohol Control Office (“TACO”) of the Department of Health (“DH”) has been conducting site visit regularly with a view to ensuring that the list of PTFs in the aforementioned subsidiary legislation are up-to-date in line with the actual situation.

6. Subsequent to the last designation exercise in 2018, site visits and consultation with the Transport Department (“TD”) revealed that –

- (a) three **new** PTFs were found to meet the criteria specified in section 3(1AB) of Cap. 371;
- (b) **changes** in location, physical features and settings on the ground necessitate amendments to the extent of NSAs designated in four PTFs already listed in the Schedule to Cap. 371D; and
- (c) one PTF with a designated NSA, which has been listed in the Schedule to Cap. 371D, **no longer meets** the criteria owing to changes in transport arrangement.

Implementation

7. Following past practice, the scope of NSAs to be designated as statutory

NSAs will cover the boarding and waiting areas of the PTFs, as well as the areas that passengers will pass by in the course of accessing and interchanging between different modes of public transport. As the physical conditions of each PTF vary, the exact scope of NSA in each PTF will be delineated by reference to a gazette plan. The area in a PTF proposed to be designated as NSA is the area shown coloured orange and edged red on the plan signed by DoH and deposited in the Land Registry. Our plan is for the changes in NSAs at the PTFs to take effect on 31 December 2019.

8. To facilitate implementation of the smoking ban at the PTFs, TACO will arrange to display signs, publicity materials, and other demarcations including markings on the ground as appropriate to indicate clearly and visibly to the public the boundaries of the NSA in each PTF, having regard to their respective physical settings. The plans showing the boundaries of the NSAs will be posted at prominent positions such as the main entrances and exits. TACO will liaise with the relevant transport operators and the venue or facility managers if applicable to facilitate implementation of the smoking ban at those PTFs.

9. TACO will continue to maintain close liaison with TD and other relevant government departments to conduct site inspections. It will review the boundaries of NSAs in PTFs as and when necessary and update regularly the designated NSAs set out in Cap. 371D.

THE AMENDMENT NOTICE

10. The Amendment Notice amends Cap. 371D to designate three new PTFs as NSAs, reflect the changes in four PTFs which are already designated as NSAs and remove the designation of one PTF from the Schedule to Cap. 371D. Subject to negative vetting by the Legislative Council (“LegCo”), the Amendment Notice will come into operation on 31 December 2019.

LEGISLATIVE TIMETABLE

11. The legislative timetable is as follows –

Publication of Amendment Notice in the Gazette	11 October 2019
Tabling at LegCo	16 October 2019

IMPLICATIONS OF THE PROPOSAL

12. The Amendment Notice is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the principal ordinance. Additional staffing and financial implications, if any, arising from the implementation of the proposal will be absorbed within the existing manpower and financial resources of DH. It has insignificant family and no economic, environmental, sustainability or gender implications.

PUBLICITY

13. An information note on the details of the amendments has been issued to 18 District Councils. All plans of the NSAs of the PTFs have been deposited in the Land Registry for inspection by the public. They will also be posted on TACO's website before the designation takes effect.

ENQUIRIES

14. Any enquiry on this brief can be addressed to Dr. Manny LAM, Senior Medical and Health Officer (Tobacco and Alcohol Control Office) 1 (Tel: 3901 4102; E-mail: smo1_tco@dh.gov.hk).

Food and Health Bureau
Department of Health
9 October 2019

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2019

(Made by the Director of Health under section 3(1AB) of the Smoking (Public Health) Ordinance (Cap. 371))

1. Commencement

This Notice comes into operation on 31 December 2019.

2. Smoking (Public Health) (Designation of No Smoking Areas) Notice amended

The Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371 sub. leg. D) is amended as set out in section 3.

3. Schedule amended (designated no smoking areas in public transport facilities)

(1) The Schedule, Part 2—

Repeal the item relating to To Wah Road Bus Terminus, Yau Ma Tei.

(2) The Schedule, Part 2—

Add in alphabetical order

“West Kowloon Station
Bus Terminus
(西九龍站巴士總站)

Located at Jordan Road, Yau Ma Tei, Kowloon, and shown coloured orange and edged red on Plan No. DH/TCO/C115V1, signed by the Director of Health on 25 September 2019 and deposited in the Land Registry.”.

(3) The Schedule, Part 3—

Repeal the item relating to Cheung Wang Public Transport Interchange, Tsing Yi

Substitute

“Cheung Wang Public Transport Interchange, Tsing Yi
(青衣長宏公共運輸交匯處)

Located at Liu To Road, Tsing Yi, New Territories, and shown coloured orange and edged red on Plan No. DH/TCO/O-162V3, signed by the Director of Health on 25 September 2019 and deposited in the Land Registry.”.

(4) The Schedule, Part 3—

Repeal the item relating to Fo Tan (Shan Mei Street) Public Transport Interchange

Substitute

“Fo Tan (Shan Mei Street) Public Transport Interchange
(火炭(山尾街)公共運輸交匯處)

Located at Shan Mei Street, Fo Tan, Sha Tin, New Territories, and shown coloured orange and edged red on Plan No. DH/TCO/O-079V2, signed by the Director of Health on 25 September 2019 and deposited in the Land Registry.”.

(5) The Schedule, Part 3—

Repeal the item relating to Hong Sing Garden Public Transport Interchange, Tseung Kwan O

Substitute

“Hong Sing Garden Public Transport

Located at Lam Shing Road, Tseung Kwan O, New

Interchange, Tseung
Kwan O
(將軍澳康盛花園公共運
輸交匯處)

Territories, and shown coloured
orange and edged red on Plan
No. DH/TCO/O-103V2, signed
by the Director of Health on 25
September 2019 and deposited
in the Land Registry.”.

(6) The Schedule, Part 3—

**Repeal the item relating to Tsing Yi Station Public
Transport Interchange**

Substitute

“Tsing Yi Station Public
Transport Interchange
(青衣站公共運輸交匯
處)

Located at Tsing King Road,
Tsing Yi, New Territories, and
shown—

(a) coloured orange and edged
red; and

(b) coloured yellow and edged
red,

on Plan No. DH/TCO/O-169V2,
signed by the Director of Health
on 25 September 2019 and
deposited in the Land
Registry.”.

(7) The Schedule, Part 3—

Add in alphabetical order

“Chung On Bus Terminus
(頌安巴士總站)

Located at Chung On Shopping
Centre, Chung On Estate, 632
Sai Sha Road, Ma On Shan,
New Territories, and shown
coloured orange and edged red
on Plan No. DH/TCO/C048V1,

signed by the Director of Health
on 25 September 2019 and
deposited in the Land Registry.

Sai Kung (North) Public
Transport Interchange
(西貢(北)公共運輸交匯
處)

Located at Mei Yu Street, Sai
Kung, New Territories (near Sai
Kung Police Station), and shown
coloured orange and edged red
on Plan No. DH/TCO/O-107V1,
signed by the Director of Health
on 25 September 2019 and
deposited in the Land
Registry.”.



Director of Health

25 September 2019

Explanatory Note

This Notice amends the Schedule to the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371 sub. leg. D) to update the list of public transport facilities that are designated as no smoking areas.