

LEGISLATIVE COUNCIL BRIEF

SMOKING (PUBLIC HEALTH) ORDINANCE (CAP. 371)

**SMOKING (PUBLIC HEALTH)
(DESIGNATION OF NO SMOKING AREAS)
(AMENDMENT) NOTICE 2021**

INTRODUCTION

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

2. On 12 August 2021, 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 2021 (“the Amendment Notice”), at **Annex**, to –

- (a) designate two new PTFs as NSAs;
- (b) reflect the changes in four PTFs which are already designated as NSAs; and
- (c) cease the designation of two PTFs as NSAs.

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, which are specified in the Schedule to the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D). The Tobacco and Alcohol Control Office (“TACO”) of the Department of Health (“DH”) has been conducting site visits regularly with a view to ensuring that the PTFs specified in the Schedule to Cap. 371D are up-to-date and in line with the actual situation.

6. Subsequent to the last designation exercise in 2020, site visits and consultation with the Transport Department (“TD”) reveal that –

- (a) two **new** PTFs are found to meet the criteria specified in section 3(1AB) of Cap. 371;
- (b) **changes** in 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) two PTFs with designated NSAs, which have 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 PTFs to be designated as 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 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 with colour codes 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 2021.

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 and update the list of designated NSAs set out in Cap. 371D as and when necessary.

THE AMENDMENT NOTICE

10. The Amendment Notice amends Cap. 371D to designate two new PTFs as NSAs, reflect the changes in four PTFs which are already designated as NSAs and cease the designation of two PTFs as NSAs. Subject to negative vetting by the Legislative Council (“LegCo”), the Amendment Notice will come into operation on 31 December 2021.

LEGISLATIVE TIMETABLE

11. The legislative timetable is as follows –

Publication of Amendment Notice in the Gazette	20 August 2021
Tabling at LegCo	25 August 2021

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. Information papers on the details of the amendments have 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 amendments take effect.

ENQUIRIES

14. Any enquiry on this brief can be addressed to Dr. Janet KWAN, Senior Medical and Health Officer (Tobacco and Alcohol Control Office) 2, Tobacco and Alcohol Control Office, Department of Health (Tel: 3901 4103; E-mail: smo2_taco@dh.gov.hk).

Food and Health Bureau
Department of Health
18 August 2021

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice
2021

Section 1

1

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2021

(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 2021.

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 1—

Repeal the item relating to Wong Chuk Hang Temporary Bus Terminus

Substitute

“Wong Chuk Hang
Temporary Bus Terminus
(黃竹坑臨時巴士總站)

Located at Nam Long Shan Road, Wong Chuk Hang, Hong Kong, and shown coloured orange and edged red on Plan No. DH/TCO/O-180V2, signed by the Director of Health on 12 August 2021 and deposited in the Land Registry.”

(2) The Schedule, Part 2—

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice
2021

Section 3

2

Repeal the item relating to Kwun Tong Station Public Transport Interchange

Substitute

“Kwun Tong Station Public Transport Interchange
(觀塘站公共運輸交匯處)

Located at Kwun Tong Road, Kwun Tong, Kowloon, and shown coloured orange and edged red on Plan No. DH/TCO/O-048V2, signed by the Director of Health on 12 August 2021 and deposited in the Land Registry.”

(3) The Schedule, Part 2—

Repeal the item relating to Yue Man Square Temporary Bus Terminus, Kwun Tong.

(4) The Schedule, Part 2—

Add in alphabetical order

“Sau Mau Ping (Central)
Bus Terminus
(秀茂坪(中)巴士總站)

Located at Sau Ming Road, Sau Mau Ping, Kowloon, and shown coloured orange and edged red on Plan No. DH/TCO/O-051V1, signed by the Director of Health on 12 August 2021 and deposited in the Land Registry.”

(5) The Schedule, Part 3—

Repeal the item relating to Siu Hong Court Bus Terminus, Tuen Mun

Substitute

“Siu Hong Court Bus Terminus, Tuen Mun

Located at Siu Hong Road, Tuen Mun, New Territories,

(屯門兆康苑巴士總站) and shown coloured orange and edged red on Plan No. DH/TCO/O-130V2, signed by the Director of Health on 12 August 2021 and deposited in the Land Registry.”.

(6) The Schedule, Part 3—

Repeal the item relating to Tai Po Market Station Public Transport Interchange

Substitute

“Tai Po Market Station
Public Transport
Interchange
(大埔墟站公共運輸交匯
處)

Located at Uptown Plaza, 9
Nam Wan Road, Tai Po, New
Territories, and shown coloured
orange and edged red on Plan
No. DH/TCO/C-061V2, signed
by the Director of Health on 12
August 2021 and deposited in
the Land Registry.”.

(7) The Schedule, Part 3—

Repeal the item relating to LOHAS Park Station Public Transport Interchange.

(8) The Schedule, Part 3—

Add in alphabetical order

“Chun Yeung Estate Public
Transport Interchange, Fo
Tan
(火炭駿洋邨公共運輸交匯
處)

Located at Chun Yeung
Shopping Centre, Chun Yeung
Estate, 20 Kwei Tei Street, Fo
Tan, Sha Tin, New Territories,
and shown coloured orange and
edged red on Plan No.
DH/TCO/C-119V1, signed by

the Director of Health on 12
August 2021 and deposited in
the Land Registry.”.

Director of Health

2021

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice
2021

Explanatory Note

Paragraph 1

5

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.