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Paper for the House Committee meeting on 20 November 2020

**Report of the Subcommittee on Smoking (Public Health)
(Designation of No Smoking Areas) (Amendment) Notice 2020**

Purpose

This paper reports on the deliberations of the Subcommittee on Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2020 ("the Subcommittee").

Background

2. According to the Legislative Council ("LegCo") Brief (File Ref: FH CR 7/52/581/89) issued by the Food and Health Bureau and the Department of Health ("DH") on 7 October 2020, it is the established policy of the Government to discourage smoking, contain the proliferation of tobacco use and protect the public from passive smoking with a view to protecting public health.

Designation of No Smoking Areas ("NSAs")

3. The Smoking (Public Health) Ordinance (Cap. 371) ("the Ordinance") and its subsidiary legislation provide a legislative framework for restricting the use, sale and promotion of tobacco products. Under the Ordinance, any person who smokes or carries a lighted cigarette, cigar or pipe in areas designated as NSAs or in public transport carriers¹ commits an offence. Schedule 2 to the Ordinance specifies a number of designated NSAs and exempt areas. Section 3(1AB) of the Ordinance empowers the Director of Health ("DoH") to, by notice published in the Gazette, designate as an NSA the whole or a part of:

¹ According to section 2 of the Ordinance, "public transport carrier" means any public bus, public light bus, taxi, train, light rail vehicle, car, tramcar or ferry vessel mentioned in Schedule 1 to the Ordinance.

- (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).

4. Since 1 September 2009, the Administration has designated NSAs in public transport facilities² ("PTFs") by phases for those areas identified as fulfilling the criteria as stipulated in section 3(1AB) of the Ordinance. Currently, there are 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 DH has been conducting site visits regularly, with a view to ensuring that the designated NSAs in the Schedule to Cap. 371D are up-to-date and in line with the actual situation.

5. After the last designation exercise in 2019, subsequent site visits and consultation with the Transport Department have revealed that:

- (a) five new PTFs are found to meet the criteria stipulated in section 3(1AB) of the Ordinance;
- (b) changes in location, physical features and settings on the ground necessitate amendments to the extent of NSAs designated in six 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.

² According to section 2 of the Smoking (Public Health) (Designation of No Smoking Areas) Notice (Cap. 371D), "public transport facility" means:

- (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).

Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2020 (L.N. 204 of 2020)

6. On 9 October 2020, the Administration published in the Gazette the Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2020 ("the Amendment Notice"). The Amendment Notice is made by DoH under section 3(1AB) of the Ordinance to amend the Schedule to Cap. 371D by:

- (a) adding five new PTFs³ to the effect of designating such facilities as NSAs;
- (b) updating the details of six PTFs⁴ already designated as NSAs; and
- (c) removing one PTF (i.e. Hung Hom Ferry Pier Public Transport Interchange) to cease the designation of that PTF as NSA.

7. The Amendment Notice, which will come into operation on 31 December 2020, was tabled before LegCo on 14 October 2020 for negative vetting.

The Subcommittee

8. At the House Committee meeting on 16 October 2020, Members agreed to form a subcommittee to study the Amendment Notice. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Dr Pierre CHAN, the Subcommittee has held two meetings, one of which was with the Administration.

9. The expiry date for amendments to be made to the Amendment Notice has been extended from the Council meeting of 11 November 2020 to that of 2 December 2020 by a resolution of the Council passed at its meeting of 11 November 2020.

³ These facilities are (i) Chuen On Road Bus Terminus, Tai Po; (ii) Container Port Road Public Transport Interchange, Kwai Chung; (iii) Sea Crest Villa Bus Terminus, Tsing Lung Tau; (iv) Tin Shui Wai Station Public Transport Interchange and (v) Yuen Chau Kok Bus Terminus, Sha Tin.

⁴ These facilities are (i) Chevalier Garden Public Transport Interchange, Ma On Shan; (ii) Kwai Fong Station Bus Terminus; (iii) Sha Tin Station Public Transport Interchange; (iv) Kwong Yuen Public Transport Interchange, Sha Tin; (v) Tsuen King Circuit (Allway Gardens) Bus Terminus, Tsuen Wan; and (vi) Tai O Bus Terminus, Lantau Island.

Deliberations of the Subcommittee

Suggestion of designating "smoking areas" instead of "no smoking areas"

10. Members are gravely concerned about the impact of passive smoking on non-smokers. Some members, including Mr LEUNG Yiu-chung and Mr KWOK Wai-keung, have pointed out that people now have to smoke on pavements or at roadside because of the designation of more public places/PTFs as NSAs. They hope that since the Government's policy is to discourage smoking and protect the public from passive smoking, the future development trend in respect of smoking restriction should move towards a total ban on smoking in public places leaving with certain areas permitted by law to be designated smoking areas. A suggestion is made that reference may be drawn from the regulatory regime in Japan where smoking is prohibited in public places except in designated smoking areas. These members have also pointed out that smoking ban has already been applied in all common areas (other than designated smoking areas) in public housing estates as well as public pleasure grounds managed by the Leisure and Cultural Services Department, and the results are positive since the environments in public housing estates and public pleasure grounds have been improved and estate residents/pleasure ground users are protected from exposure to second-hand smoking. Dr CHENG Chung-tai, however, has expressed reservations over the suggestion of designating "smoking areas" as it might create a negative "labelling" effect on smokers.

11. According to the Administration, members' suggestion of expanding the smoking ban to all public areas (by designating "smoking areas" instead) involves fundamental changes in and comprehensive review of the policy relating to smoking ban in public as well as outdoor places. It is worth noting that the Ordinance and its subsidiary legislation provide the legal framework on tobacco control for restricting the use, sale and promotion of tobacco products in Hong Kong. Section 3 of the Ordinance prohibits the smoking or carrying of lighted cigarettes, cigars or pipes in designated NSAs. Section 4 of the Ordinance, on the other hand, prohibits the smoking or carrying of lighted cigarettes, cigars or pipes in prescribed public transport carriers.

12. The Administration further advises that over the past few decades, it has been adopting 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. The Administration stresses that in determining a total ban on smoking in public places, due consideration should be given to the overall readiness of the community as well as the legal feasibility, practicality and enforceability.

Objectives set for restricting smoking

13. Members are concerned about the effectiveness of the Administration's work in discouraging smoking and containing the proliferation of tobacco use. Enquiries have been raised on the objectives set for tobacco control and how well they are achieved. In members' views, the Administration should continue to strengthen tobacco control measures and, where necessary, consult relevant anti-smoking organizations (e.g. the Hong Kong Council on Smoking and Health) in this regard.

14. According to the Administration, the smoking prevalence of Hong Kong is among the lowest in the world. Through progressive tobacco control efforts on various fronts, cigarette consumption has been on a general trend of decline and smoking prevalence has dropped from over 20% in the 1980s to the current level of around 10%. The Administration has laid down the target of further reducing smoking prevalence to 7.8% by 2025 as promulgated under "Towards 2025: Strategy and Action Plan to Prevent and Control Non-communicable Diseases in Hong Kong".

Implementation and enforcement of smoking ban in NSAs

15. Members, including Dr Pierre CHAN and Mr KWOK Wai-keung, have enquired whether implementation and enforcement of the smoking ban in NSAs has been smooth throughout the years. In members' view, to enhance the deterrent effect, proactive inspections should be arranged at NSAs. Information has also been sought on the number of prosecutions against persons contravening the smoking ban at PTFs designated as NSAs.

16. The Administration advises that TACO will follow up on complaints about smoking offence received through its complaint hotline, and conduct inspections for most cases. Each year, TACO receives around 1 500 complaint cases about smoking offence at PTFs (which are designated as NSAs) and carries out over 3 000 inspections, leading to the issue of about 1 500 to 2 000 fixed penalty notices ("FPNs"). As regards smoking offences occurred in all NSAs across the territory, the numbers of complaint cases received, inspections conducted and FPNs issued are much higher, which, on average, stand at 10 000, 30 000 and 8 000 respectively per year.

17. Dr CHENG Chung-tai has enquired whether private car drivers will be prosecuted if they park their cars within the boundaries/in the proximity of PTFs designated as NSAs and smoke inside the cars. The Administration and the Legal Adviser to the Subcommittee have both advised that section 3(2) of the Ordinance stipulates that no person shall smoke or carry a lighted cigarette, cigar

or pipe in an NSA. As the scenario envisaged by Dr CHENG is not one of the exemptions provided for under section 3(2A) of the Ordinance, the Administration and the Legal Adviser to the Subcommittee consider that it is more likely than not that the said private car drivers would commit an offence under section 3(2) of the Ordinance. Further, the Legal Adviser to the Subcommittee has pointed out that whether a suspected offender will be prosecuted in a particular case will also depend on the prosecution policy of the relevant law enforcement agencies. In case of disputes, the person concerned might lodge an appeal which will be dealt with by a magistrate.

Publicity of the smoking ban

18. Some members have expressed concern that smokers might not be aware that they are smoking in an NSA, especially for those PTFs which are newly designated as NSAs or those existing NSAs the boundaries of which have been updated. There is a suggestion that the Administration should step up its publicity efforts before the Amendment Notice takes effect.

19. According to the Administration, TACO will arrange to display signs and banners at conspicuous locations within the designated NSAs and other demarcations (including markings on the ground as appropriate) to indicate clearly and visibly the boundaries of NSAs in PTFs, having regard to their respective physical settings. TACO will also send smoke-free ambassadors to promote the implementation of the smoke ban on site two weeks before the commencement of the Amendment Notice. In addition, information papers on the details of the amendments have been issued to 18 District Councils. All plans of PTFs designated as NSAs 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.

Recommendation

20. Members of the Subcommittee support the Amendment Notice. The Subcommittee will not propose any amendment to the Amendment Notice.

Advice Sought

21. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on Smoking (Public Health)
(Designation of No Smoking Areas) (Amendment) Notice 2020**

Membership list*

Chairman	Dr Hon Pierre CHAN (Chairman)
Members	Hon Abraham SHEK Lai-him, GBS, JP Hon KWOK Wai-keung, JP Dr Hon Fernando CHEUNG Chiu-hung Hon Elizabeth QUAT, BBS, JP Dr Hon CHENG Chung-tai (Total : 6 members)
Clerk	Miss Josephine SO
Legal Adviser	Ms Vanessa CHENG
Date	16 November 2020

* Changes in membership are shown in Annex to Appendix.

**Subcommittee on Smoking (Public Health)
(Designation of No Smoking Areas) (Amendment) Notice 2020**

Changes in membership

Member	Relevant date
Dr Hon Helena WONG Pik-wan	Up to 4 November 2020
Hon SHIU Ka-chun	Up to 4 November 2020
Prof Hon Joseph LEE Kok-long, SBS, JP	Up to 10 November 2020
Hon HUI Chi-fung	Up to 11 November 2020
Hon Jeremy TAM Man-ho	Up to 11 November 2020
Hon James TO Kun-sun	Up to 12 November 2020
Hon Andrew WAN Siu-kin	Up to 12 November 2020
Hon LAM Cheuk-ting	Up to 12 November 2020
Hon KWONG Chun-yu	Up to 12 November 2020
Hon LEUNG Yiu-chung	Up to 15 November 2020

Note 1 According to the announcement made by the Hong Kong Special Administrative Region Government on 11 November 2020 pursuant to the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region, Kenneth LEUNG, KWOK Ka-ki, Dennis KWOK Wing-hang and Alvin YEUNG were disqualified from being a member of the Legislative Council ("LegCo") on 30 July 2020.

Note 2 Pursuant to section 15(1)(a) of the Legislative Council Ordinance (Cap. 542), HUI Chi-fung ceased to hold office as a member of LegCo upon his resignation on 12 November 2020.