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THE NEW SMOKING BAN – what it means to Hong Kong and what still needs to happen

July 10th 2009

Under several existing Hong Kong laws , should the authorities choose to enforce them, any person smoking or carrying a lit tobacco product in public places and workplaces commits several possible offences.

As of 1st July 2009 it is illegal to smoke inside any workplace in Hong Kong ; from January 1st 2007 smoking was banned in restaurant workplaces but 6 different types of establishments including nightclubs, bars and mahjong parlours were allowed to apply for an exemption to the smoking ban under the Qualified Establishment scheme ; that exemption is now rescinded.

Clear the Air predicted that the vast majority of Hong Kong smokers , being law abiding, would therefore step out of restaurants and bars etc into the street to smoke. We wrote to Legco about this and the Hon Cheng Kar Foo raised a relevant question in Legco to the Health Minister. A waffle reply was issued in response, as expected.

So what is different overseas ? Well, overseas they also looked ahead and hand in hand with their legislation they banned smoking outdoors within a set distance of entrances to offices, restaurants, bars, schools, parks, playgrounds etc.





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City of Houston Smoking Ordinance No. 2006-1054

NO SMOKING

This is a smoke-free establishment.



No Smoking within 25 feet of the entrance, exit, wheelchair ramp or openable window.

Hong Kong needs to follow overseas jurisdictions and provide comprehensive protection in all workplaces and in entranceways and patios . **WHY ?**

Because as the smokers congregate outside bar and restaurant entrances they create secondhand smoke comprised of mainstream smoke the smoker exhales and sidestream smoke from the slow burning tip of the cigarette – this is 4-5 times more toxic than mainstream smoke. Under the licensing laws all these bars and restaurants require a fresh air ventilation system that sucks air from near the front of the premises to the inside at a rate of 17 cubic meters per person per hour ; this system now sucks in the secondhand smoke of the smokers congregating outside the doorways and disperses it throughout the licensed premises ! In addition non smokers and children have to pass through the plumes of toxic smoke to enter the premises which is a major danger to their health.

Overseas administrations also placed the onus on licensees of liquor licensed establishments to enforce smoking bans in their premises or lose their liquor licences in default; they also banned smoking in Outside Seating Accommodation / patio dining areas of bars and restaurants to fully protect employees and other customers alike. Hong Kong has not done this and also needs to follow suit. There should be no smoking in any part of any bar or restaurant premises, period !

Hong Kong Laws:

Under the Public Health and Municipal

Services Ordinance section 2, it is an offence to litter in public where "deposit", in relation to litter or waste, includes to cast, throw, drop, discharge, scatter or **blow such litter or waste**; and "litter" includes: any dirt, dust, **ashes**, paper or refuse; any rubbish or debris; **any other offensive, noxious or obnoxious matter**; any **substance likely to constitute a nuisance**. *Smoking causes litter and ash falls to the ground and into the air as the cigarette burns. The smoke is lethal, offensive and obnoxious, and causes a nuisance to non-smokers in public places. Dropping butts causes litter and is an obvious separate offence.*

Under the Air Pollution Control Ordinance section 10, "nuisance" includes an obnoxious event set out in section 10(2)(h) that includes the deposit of dust or particles of any kind; an objectionable odour; irritation of the eye, nose or skin or any other sensory discomfort. *Cigarette smoke in public places is obnoxious to majority non-smokers, causes the deposit of dust or particles, an*



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objectionable odour to non-smokers and scientifically proven studies show irritation of the nose , asthma attacks and sensory discomfort.

Under the Public Cleansing and Prevention of Nuisances Regulations section 4, no person shall deposit or cause or permit to be deposited any litter or waste on or in any street or public place. *We have yet to see anybody holding a lit cigarette in a portable container to prevent the dust, ash and debris from being deposited in the air, street or public place.*

Under the Air Pollution Control Ordinance section 2, "air pollution" means an emission of air pollutants which either alone or with another emission of air pollutants is prejudicial to health; or is a nuisance. *The lethal dangers to health of tobacco smoke are documented and scientifically proven beyond contest , the smoke is a major nuisance and air pollutant and highly prejudicial to health* **The Administration should enforce its laws or remove them from the lawbooks.**

Although the Smoking (Public Health) laws (Cap 371) <http://www.legislation.gov.hk/eng/home.htm> place no onus on licensees to enforce the smoking ban in their premises, as of July 1st 2009 it is illegal for anyone to smoke or carry a lit tobacco product in liquor licensed premises in Hong Kong. Any licensee permitting the illegal act of smoking or carrying a lit tobacco product to take place on the premises is therefore in direct breach of his/her liquor licence condition number 7 which states

7. The Licensee shall not permit any person to occupy or use any portion of the premises for any immoral or illegal purpose.

By allowing smoking the non compliant licensee thereby breaches a condition of his/her liquor licence and risks losing or non renewal of the licence.

Can smokers congregating on the street to smoke be described as ‘loitering’? Passive smoking kills 1,324 persons each year in Hong Kong so all persons, whether smokers or not and especially children can be rightly concerned about their safety and health if they have to pass through carcinogenic secondhand smoke. So when a group of smokers congregates outside entrances any reasonable person can be concerned for his/her safety ,health and well-being if they have to pass through the plumes of toxic particulates – here is what the law says:

CRIMES ORDINANCE Cap 220 - SECT 160 Loitering PART XIII MISCELLANEOUS OFFENCES (2) Any person who **loiters** in a [public place](#) or in the [common parts](#) of any building and **in any way wilfully obstructs any person using that place or the [common parts](#) of that building**, shall be guilty of [an offence](#) and shall be liable on conviction to imprisonment for 6 months.

(3) If any person **loiters** in a [public place](#) or in the [common parts](#) of any building and **his presence there, either alone or with others, causes any person reasonably to be concerned for his safety or well-being**, he shall be guilty of [an offence](#) and shall be liable on conviction to imprisonment for 2 years.

(4) In this section "common parts"



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(公用部分), in relation to a building, means- (a) any entrance hall, lobby, passageway, corridor, staircase, landing, rooftop, lift or escalator; (b) any cellar, toilet, water closet, wash house, bath-house or kitchen which is in common use by the occupiers of the building; (c) any compound, garage, carpark, car port or lane. (Added 37 of 1979 s. 2) "common parts" (公用部分)

A recent Stanford University study on Outdoor Tobacco Smoke (link below) is herewith . A summary of the findings follows:

"Our results demonstrate that Outdoor Tobacco Smoke can be high during periods of smoking in locations where persons are near active smokers. Therefore, it is possible for OTS to present a nuisance or hazard under certain conditions. Examples of scenarios where OTS levels might be high include eating dinner with a smoker on an outdoor patio, sitting at a table next to a smoker at a sidewalk café, sitting next to a smoker on a park bench, or standing near a smoker outside a building. Children who accompany a smoking parent or guardian may experience substantial exposure. Outdoor restaurant or pub workers who spend a significant portion of their time within a few feet of active smokers are also likely to receive relatively large total OTS exposures over the course of a day, possibly exceeding the EPA 24-hr health standard for fine particles. If one is upwind from a smoker, levels most likely will be negligible. However, if the smoker's position changes or one spends time downwind from a smoker, then moving to a distance of 2 m can reduce the likelihood of experiencing elevated particle exposure because of OTS. Future studies should measure OTS levels for dynamic situations with multiple smokers, including continuous measurements of personal OTS concentrations or biomarker levels for workers in outdoor locations. Support for health-based OTS bans may lie in a potential acute effect on susceptible populations. Short term OTS exposures might be life threatening for high risk persons, because the human cardiovascular system is very sensitive to secondhand smoke.(31) A recent before-and-after smoking ban study showed a decreased chance of myocardial infarction when a ban was in place,(32) which suggests that there is an acute risk associated with SHS exposure for persons at increased risk of coronary heart disease or with known coronary artery disease.(33)"

<http://www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf>

<http://news.stanford.edu/news/2007/may9/smoking-050907.html>

Stanford Uni Report, May 2, 2007 Exposure to secondhand tobacco smoke in outdoor settings a risk BY MARK SHWARTZ

James Middleton

Chairman anti tobacco committee

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NO SMOKING.

It is against the law
to smoke in this doorway



NO SMOKING.

It is against the law
to smoke in this pub



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NO SMOKING.

It is against the law to
smoke in these premises

嚴禁吸煙。

在此建築物內吸煙
乃屬違法



**Smoking is prohibited
within 25 feet of
all building entrances.**

Thank you for not smoking.

Washington Clean Indoor Air Act – RCW 70.160

