

SMOKING (PUBLIC HEALTH) ORDINANCE 1982
ARRANGEMENT OF SECTIONS

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KAPPA LIBRARY

SMOKING (PUBLIC HEALTH)

A280

Ord. No. 58/82

HONG KONG

No. 58 OF 1982

I assent.



Philip HADDON-CAVE,
Acting Governor.

29 July 1982

An Ordinance to prohibit smoking in certain areas, to provide for the display of a health warning and other information on cigarette packets and in cigarette advertisements and for matters incidental thereto including the amendment of the Places of Public Entertainment Ordinance.

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Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

Short title and commencement.

1. This Ordinance may be cited as the Smoking (Public Health) Ordinance 1982 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*; and different days may be so appointed for different provisions of this Ordinance and for different purposes of the same provision.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—

“advertisement” means any announcement to the public made or to be made in any manner;

“brand”, except in section 14(3), includes a brand product, that is to say a variety of a brand marketed as having qualities differing from another variety of that brand;

“cigarette” means tobacco rolled up in paper or in any other material except tobacco, in such form as to be capable of immediate use for smoking;

“cigarette advertisement” has the meaning assigned to it by section 14;

“cigarette tobacco” means tobacco packaged as being suitable for the making by the purchaser of cigarettes for his own use;

“class” in relation to a class of seats means a class defined by reference to their price, all seats sold at the same price on the same occasion to the same category of persons being deemed to belong to the same class;

“ferry vessel” means a vessel operated on a ferry service as defined for the purposes of the Ferry Services Ordinance 1982 and having seating accommodation for 50 or more passengers;

“land vehicle” means a vehicle other than a train used on land for the transport of members of the public for hire or reward;

"manager" in relation to—

- (a) a cinema, theatre, concert hall or public transport vehicle service, includes an assistant manager, any person holding an appointment analogous to that of manager or assistant manager or any person who is responsible for the management, or is in charge or control of the cinema, theatre, concert hall or public transport service;
- (b) a lift, includes the owner, occupier or lessee of the building in which the lift is situated or the person in charge or control of such building or lift;

"newspaper", "local newspaper" and "printed document" have the same meaning as in the Control of Publications Consolidation Ordinance; (Cap. 268.)

"no smoking area", except in section 5(2), means an area or place in which smoking is prohibited by section 3;

"proof of identity" means proof of identity for the purposes of Part IVA of the Immigration Ordinance; (Cap. 115.)

"public lift" means a lift to which the public have access and includes any lift giving access to separately occupied flats, offices or other units of accommodation and a hotel lift;

"public transport vehicle" means—

- (a) a ferry vessel;
- (b) a land vehicle; or
- (c) a train;

while the vessel, vehicle or train is transporting members of the public, but excludes a taxicab, private hire vehicle or other vehicle or vessel hired or chartered to an individual whether on his own behalf or that of a number of persons;

"publish" in relation to an advertisement means making known an advertisement in any manner;

"regulations" means regulations under section 18;

"retail container" means a container suitable for the retail marketing of cigarette packets;

"smoke" means inhaling and expelling the smoke of tobacco or other substance;

"train" means a train of linked carriages used for the transport of members of the public for hire or reward.

PART II

NO SMOKING AREAS

- in— 3. No person shall smoke or carry a lighted cigarette, cigar or pipe
- (a) any area demarcated as a no smoking area under section 4;
 - (b) any public lift;
 - (c) any land vehicle, being a public transport vehicle, having only one deck;
 - (d) the lower deck of a land vehicle, being a public transport vehicle, having more than one deck.

Prohibition on smoking in no smoking areas.

Setting aside
of no smoking
areas.

4. (1) The manager of a cinema, theatre or concert hall shall set aside not less than 50 per cent of each class of its seating accommodation as an area in which smoking is prohibited; and he may set aside all such accommodation.

(2) The manager of a public transport service shall set aside not less than 50 per cent of each class of seating accommodation in every public transport vehicle of that service, not being a vehicle to which paragraph (c) or (d) of section 3 applies, as an area in which smoking is prohibited; and he may set aside all such accommodation.

(3) For the purposes of this section—

(a) an area shall be deemed to have been set aside under subsection (1) only while it is open to the public;

(b) a cinema, theatre or concert hall means—

(i) any building or part of a building used primarily as a cinema, theatre or concert hall, whether or not it is being so used at the material time, other than the premises of any club, association or other body in which films are exhibited, or plays or music performed for the benefit primarily of the members thereof and their guests;

(ii) any place of public entertainment licensed under the Places of Public Entertainment Ordinance while open to the public on account of any concert, stage play, stage performance or other musical, dramatic or theatrical entertainment or any cinematograph display;

(c) the passenger carriages of a train shall be deemed to be a single vehicle.

(4) Subject to compliance with the provisions of this section, seating accommodation set aside under this section as a no smoking area may be varied by increasing or reducing that area or by substituting another area in place thereof.

(5) Any seating accommodation demarcated as an area in which smoking is prohibited by signs placed in compliance, or purported compliance, with section 5 shall be deemed to have been set aside under this section.

(6) In setting aside seating accommodation under this section the manager shall comply with any prescribed requirements relating to the relative positioning of smoking and no smoking areas.

(7) The Secretary for Social Services may in writing exempt—

(a) the manager of any cinema, theatre or concert hall from compliance with subsection (1) in relation to any occasion;

(b) the manager of a public transport vehicle from compliance, either temporarily or permanently, with subsection (2) in relation to any vehicle or vessel.

(8) The General Manager of the Kowloon-Canton Railway may set aside seating accommodation under subsection (2) and, if he does so, the provisions of this Ordinance shall apply in relation to the accommodation so set aside notwithstanding that the functions of the General Manager are performed on behalf of the Crown by virtue of the provisions of section 29(1) of the Kowloon-Canton Railway Ordinance 1982.

5. (1) The manager shall place in a prominent position in each no smoking area a sufficient number of signs in English and Chinese to indicate that smoking is prohibited in the area; such signs shall be of the

(Cap. 172.)

(17 of 1982.)

Display of
signs in no
smoking areas.

prescribed description and shall be maintained by the manager in legible condition and good order.

(2) Where an area was designated as a no smoking area prior to the coming into operation of this Ordinance, the manager shall be deemed to have sufficiently complied with subsection (1) in relation to the description of the signs if the signs, being signs placed before such coming into operation, are in English and Chinese and are to the effect that smoking is prohibited.

6. (1) The—

- (a) manager or any ticket collector or usher of any cinema, theatre or concert hall or such employee as the manager may authorize in that behalf;
- (b) driver, conductor, inspector, ticket collector of any public transport vehicle or such other employee as the manager may authorize in that behalf;
- (c) manager of a public lift or such employee as the manager may authorize in that behalf,

Powers exercisable in relation to persons smoking in no smoking area.

may require any person who smokes in a no smoking area to cease smoking forthwith, indicating the penalty therefor, and if he fails to do so, require him to give his name and address and to produce proof of identity.

(2) Any person who fails to comply with a requirement to cease smoking made under subsection (1) shall be deemed to be a trespasser and, if he is required to leave, or he is removed from, the building or vehicle in which the no smoking area is situated, he shall not be entitled to a refund of any admission fee or money paid by him for entry into the building or transport by the vehicle:

Provided that nothing in this section shall have the effect of deeming a person who smokes in a public lift to be a trespasser in the building (other than the lift) in which the lift is situated.

7. (1) Any person who contravenes section 3 commits an offence and is liable on summary conviction to a fine of \$1,000.

Offences under Part II.

(2) Any person who fails to give his name and address or to produce proof of identity when required to do so under section 6 or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a fine of \$3,000.

(3) Any manager who—

- (a) fails to set aside any area as a no smoking area in accordance with section 4; or
- (b) fails to place signs in accordance with section 5 or to maintain the signs in the manner required by that section,

commits an offence and is liable on summary conviction to a fine of \$5,000.

PART III

SALES OF CIGARETTES AND CIGARETTE TOBACCO

8. (1) No person shall sell, offer for sale or possess for the purposes of sale any cigarettes unless the packets thereof and, if the packets are within a retail container, the container also, bear in the prescribed form and manner—

Health warnings and tar group designation when cigarettes sold.

- (a) a health warning;
- (b) the tar group designation of the cigarettes.

(2) Nothing in this section or section 9 shall apply to anything done in relation to cigarettes which are held—

- (a) in bond; or
- (b) by a manufacturer of tobacco products, for export from Hong Kong.

Health warnings when cigarette tobacco is sold.

9. No person shall sell, offer for sale or possess for the purposes of sale any cigarette tobacco unless the container thereof bears a health warning in the prescribed form and manner.

Offences under Part III.

10. (1) Any person who contravenes section 8 or 9 commits an offence and is liable on summary conviction to a fine of \$5,000.

(2) Any manufacturer of cigarettes or his agent and any wholesale distributor of cigarettes who sells, offers for sale or possesses for the purpose of sale any cigarettes to which section 8 applies which have on their packet or retail container a tar group designation which, having regard to any determination under section 16 and the regulations, is incorrect, commits an offence and is liable on summary conviction to a fine of \$5,000.

(3) Any manufacturer of cigarettes or his agent and any wholesale distributor of cigarettes who sells, offers for sale or possesses for the purpose of sale any cigarettes to which section 8 applies which have on their packet or their retail container—

- (a) a brand name which indicates the cigarettes belong to a tar group to which, having regard to any determination under section 16 and the regulations, they do not belong; or
- (b) a statement as to the amount of tar in the cigarettes which, having regard to the regulations, would place the cigarettes in a tar group other than that indicated by the tar group designation on the packet or retail container or, as the case may be, by the brand name,

commits an offence and is liable on summary conviction to a fine of \$5,000.

PART IV

CIGARETTE ADVERTISING

Cigarette advertisements in printed publications.

11. (1) No person shall print or publish a cigarette advertisement in a printed publication to which this section applies unless the advertisement bears, in the prescribed form and manner—

- (a) a health warning;
- (b) the tar group designation of the cigarettes advertised.

(2) This section applies to—

- (a) any local newspaper;
- (b) any printed document published or distributed in Hong Kong, not being a newspaper or an advertisement published or distributed for the purpose of display.

(3) Nothing in this section or section 12 shall apply in relation to a cigarette advertisement in a printed publication—

- (a) being a local newspaper—

- (i) not less than 80 per cent of whose circulation is outside Hong Kong;

(ii) published for the passengers of any airline or shipping company;

(iii) published for the tobacco trade or as the "in house" magazine of any company engaged in that trade;

(b) in such circumstances as may be prescribed.

12. (1) No person shall—

(a) display;

(b) publish or distribute for the purpose of display,

any cigarette advertisement in writing or other permanent or semi-permanent form unless the advertisement has a health warning in the prescribed form and manner.

Health warning
when cigarette
advertisement
displayed.

(2) Nothing in this section shall apply in relation to a cigarette advertisement—

(a) on any—

(i) small portable object, being of a decorative nature or for personal, domestic or business use;

(ii) object worn on the person;

(iii) umbrella,

if that object or umbrella carries a cigarette advertisement only because it bears the name or trade name of a person associated with the marketing of cigarettes or cigarette tobacco or a brand name of cigarettes or cigarette tobacco and additionally or alternatively any pictorial device commonly associated therewith, but which does not illustrate or mention cigarette tobacco or cigarettes or their packages or qualities or smoking;

(b) in or upon that part of the premises of any manufacturer of tobacco or tobacco products or any dealer (whether by way of wholesale or retail) in cigarettes or cigarette tobacco which is used for the manufacture of cigarettes or cigarette tobacco or for the purpose of dealing in cigarettes or cigarette tobacco;

(c) upon a commercial vehicle registered in the name of a person who is a manufacturer or distributor of, or wholesale dealer in, cigarettes or cigarette tobacco;

(d) broadcast by television;

(e) of such other categories as may be prescribed.

13. (1) The Television Authority appointed under the Television Ordinance may from time to time issue Codes of Practice relating to cigarette advertisements broadcast by radio.

Cigarette
advertisements
on radio.
(Cap. 52.)

(2) Any Code of Practice issued under subsection (1) shall not be inconsistent with any prescribed conditions relating to the broadcast by radio of any cigarette advertisement.

(3) A Code of Practice issued under this section shall provide that when a cigarette advertisement is broadcast by radio a health warning shall also be broadcast in such manner and at such time as the Code may specify.

(4) No person shall broadcast by radio a cigarette advertisement which does not comply with a Code of Practice issued under this section or fail to broadcast a health warning in the manner and at the time specified in such a Code of Practice.

Meaning of
cigarette
advertisement.

14. (1) For the purposes of this Part an advertisement is a cigarette advertisement if it—

- (a) contains any express or implied inducement, suggestion or request to purchase or smoke cigarettes or cigarette tobacco; or
- (b) relates to smoking in terms which are calculated, expressly or impliedly, to promote or encourage the use of cigarettes or cigarette tobacco.

(2) An advertisement which mentions the name or trade name of any person associated with the marketing of cigarettes or cigarette tobacco or a brand name of cigarettes or cigarette tobacco or any pictorial device commonly associated therewith or which illustrates or mentions smoking or cigarettes or cigarette tobacco or their packages or qualities shall be deemed to be a cigarette advertisement unless the contrary is proved.

(3) Notwithstanding subsection (2), no advertisement shall be deemed to be a cigarette advertisement only because it uses the name or trade name or a brand name of, or otherwise identifies, a person associated with the manufacture or marketing of cigarettes or cigarette tobacco as the sponsor of an event or as congratulating another person or thing on an achievement of, or event relating to, such person or thing.

Offences under
Part IV.

15. (1) Any person who contravenes section 11(1), 12(1) or 13(4) commits an offence and is liable on summary conviction to a fine of \$5,000 and, in the case of a continuing offence, to a further penalty of \$500 for each day during which the offence continues.

(2) In any proceedings for a contravention of section 11(1) it shall be a defence for the person charged to prove that the advertisement to which the proceedings relate was printed or published in such circumstances that he did not know and had no reason to believe he was taking part in the printing or publication thereof.

PART V

SUPPLEMENTARY

Evidence of
tar group.

16. (1) The Government Chemist may from time to time analyse any cigarette for the purpose of determining the tar group to which it belongs for the purposes of this Ordinance and may publish the result of any such analysis.

(2) The determination of the Government Chemist under subsection (1) as published by him shall be evidence of the tar group of the brand of cigarettes from which the cigarette analysed was taken subject to such conditions or limitations as may be prescribed; and any publication purporting to be a determination so published shall be deemed to be such a determination unless and until the contrary is proved.

(Cap. 109.)

(3) The power of a member of the Customs and Excise Service to take samples of any goods to which the Dutiable Commodities Ordinance applies conferred by section 11(1)(d) of that Ordinance shall extend to the taking of samples of cigarettes for analysis by the Government Chemist for the purposes of this section.

Amendment
of section 7
of Places
of Public
Entertainment
Ordinance.
(Cap. 172.)

17. Section 7(1) of the Places of Public Entertainment Ordinance is amended by inserting, after paragraph (i), the following paragraph—

- “(ia) the inclusion in any cigarette advertisement (as defined for the purposes of the Smoking (Public Health) Ordinance 1982), intended for exhibition at a cinematographic display, of a health

warning in such manner as may be prescribed in the regulations and enabling any advertisement which does not display such a warning to be disapproved of for exhibition;”.

18. (1) The Governor in Council may make regulations for all or any of the following matters—

Regulations
and Orders.

- (a) prescribing anything required or permitted to be prescribed under this Ordinance;
 - (b) prescribing the manner in which the tar group designation of a cigarette is to be determined for the purposes of section 12;
 - (c) requiring notification of anything done by any person which may be relevant to the tar group designation of cigarettes and imposing penalties not exceeding \$2,000 for a failure to comply with such requirement;
 - (d) excepting any cigarette advertisement from the provisions of Part IV either absolutely or subject to such exceptions as may be prescribed; and
 - (e) for the better carrying into effect of this Ordinance.
- (2) Subject to the regulations, the Secretary for Social Services may by order in the *Gazette* prescribe—
- (a) the form of any notice that smoking is prohibited, any health warning or any tar group designation where the form is required or permitted to be prescribed under this Ordinance;
 - (b) the manner in which any such notice, warning or designation is to be displayed.

Passed by the Hong Kong Legislative Council this 28th day of July 1982.

Jennie CHOK,
Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

Jennie CHOK,
Clerk to the Legislative Council.