

Smoking (Public Health) (Amendment) Ordinance 2006

Interpretation and Guidelines on Indoor No Smoking Areas

I. Purpose of the Amendment Ordinance

To protect members of the public against secondhand smoking in both indoor workplaces and indoor public places.

II. Expansion of Statutory No Smoking Areas

The statutory no smoking areas will be extended to cover the indoor areas of the workplace, restaurant premises, bar, karaoke establishment, public place, market, mahjong-tin kau premises and bathhouse, etc. Please refer to the original text of the Smoking (Public Health) (Amendment) Ordinance 2006 (“the Ordinance”) for details on the expanded no smoking areas. (The interpretation of designated no smoking areas may refer to Appendix I and types of no smoking areas to Appendix II.)

Please note that the amended provisions relating to expansion of statutory no smoking areas under the Smoking (Public Health)(Amendment) Ordinance 2006 has been passed into law at the Legislative Council, and the relevant premises shall implement a smoking ban with effect from 1 January 2007.



III. Interpretation of Indoor No Smoking Areas

(1) "Indoor" (室內) means:-

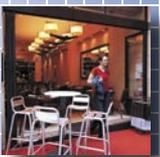
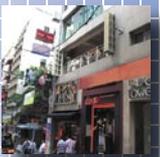
- (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
- (b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door.

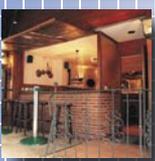
(2) Statutory Indoor No Smoking Areas: Restaurant Premises and Bar
(Pictorial examples)

(a) The indoor area of restaurant premises shall be smoking prohibited:-

- The restaurant premises below, which have ceilings and enclosed at least up to 50% of the total area on all sides (except for any window or door, or any closeable opening that functions as a window or door), shall be designated as statutory no smoking areas.

(as indicated by → )





(b) The indoor area of restaurant premises shall ban smoking, however, the outdoor area where has a roof, ceiling or cover without any enclosure on all sides is not required to ban smoking:-

➤ The following indoor areas of restaurant premises having a ceiling or a roof as cover and being completely enclosed (except for any window or door, or any closeable opening that functions as a window or door) shall be designated as no smoking areas. (as indicated → )

➤ On the other hand, if any seating accommodation located in outdoor areas is covered by a roof or canvas but its enclosure is less than 50% of the total area on all sides (except for any window or door, or any closeable opening that functions as a window or door), the outdoor area of such seating accommodation is not regarded as statutory no smoking area. (as indicated by → ).





(c) The restaurant premises below are NOT regarded as statutory no smoking areas:- (as indicated by →)



Canvas may function as a cover but the enclosure is less than 50% of the total area on all sides, so it is not regarded as an indoor area.



Outdoor restaurant without any ceiling or roof is not regarded as an indoor area.



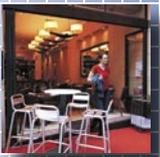
Even covered with a ceiling, the seating accommodation situated outside a restaurant with an enclosure less than 50% of the total area on all sides, is not regarded as an indoor area.

(3) Statutory Indoor No Smoking Areas: Public Places (Pictorial examples)

(a) The indoor area of public places shall be smoking prohibited:-

- The premises below, which have ceilings or roofs and are enclosed at least up to 50% of the total area on all sides (except for any window or door, or any closeable opening that functions as a window or door), shall be designated as statutory no smoking areas.

(as indicated by )





(b) Indoor area of a market is smoking prohibited:-

➤ The premises below which have ceilings or roofs and enclosed at least up to 50% of the total area on all sides (except for any window or door, or any closeable opening that functions as a window or door), shall be designated as statutory no smoking areas.

(as indicated by )



Indoor area in a market



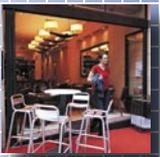
Cooked food centres in a market



(c) Escalators (indoor or outdoor areas) shall be smoking prohibited:-
(as indicated by → )



The escalators shall be designated as statutory no smoking areas, no matter it is outdoor or indoor, enclosed or not enclosed.





(d) The public places below are NOT regarded as statutory no smoking areas:-

➤ Such area, even covered with a ceiling or roof, but with the enclosure less than 50% of the total area on all sides (except for any window or door, or any closeable opening that functions as a window or door), is not regarded as a statutory no smoking area. (as indicated by →)



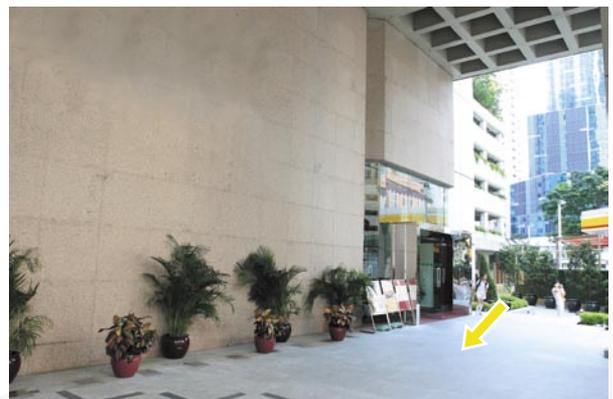
Pedestrian sidewalk covered with a roof but its enclosure is less than 50% of the total area on all sides.



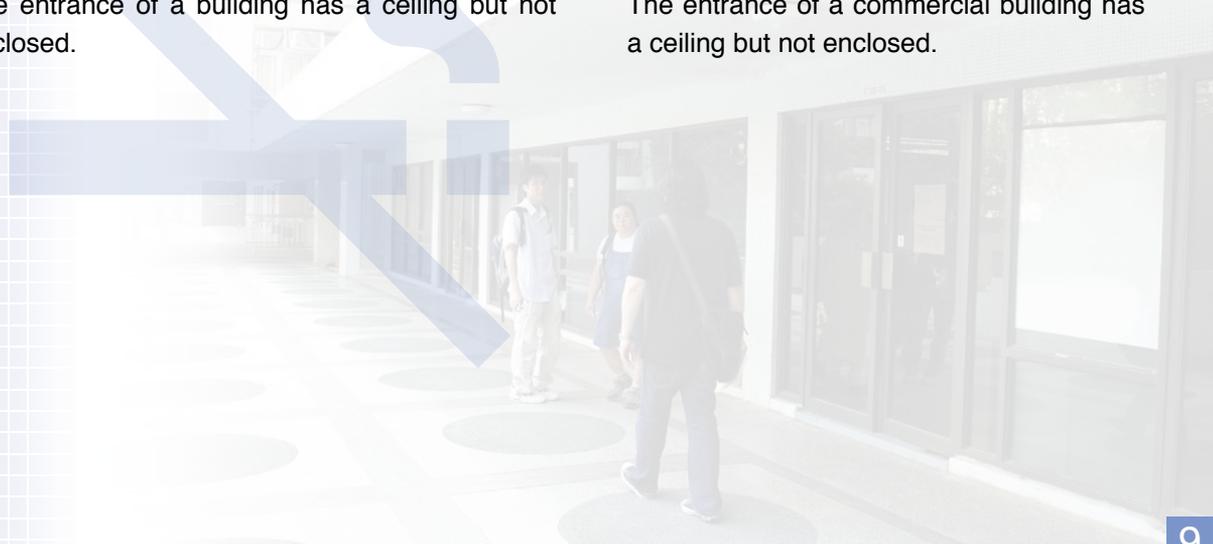
The area adjacent to estate shopping mall has a roof but its enclosure is less than 50% of the total area on all sides.



The entrance of a building has a ceiling but not enclosed.



The entrance of a commercial building has a ceiling but not enclosed.



IV. Responsibility of a Manager of Statutory No Smoking Areas

According to Section 3(3) of the Ordinance, in case a manager of a statutory no smoking area finds any person who is smoking or carrying a lighted cigarette, cigar or pipe in a no smoking area, the manager may require the person to extinguish the lighted cigarette, cigar or pipe. If the person fails to extinguish the lighted cigarette, cigar or pipe, the manager may require him: (i) to give his name and address and to produce proof of identity; and (ii) to leave the no smoking area. If necessary, the manager may call for the assistance of a police officer to assist in the enforcement of the Ordinance. Nevertheless, the manager is not liable for any legal responsibility even if a smoking incident is found in that statutory no smoking area.

V. Offences

- (1) Section 3(2) of the Ordinance stipulates that no person shall smoke or carry a lighted cigarette, cigar or pipe in a no smoking area. Any person who contravenes this section commits an offence and is liable on summary conviction to a maximum fine of \$5,000.
- (2) Section 7(2) of the Ordinance stipulates that any person who fails to give his name and address or to produce proof of identity when required to do so in Section 3(3) of the Ordinance or who then gives a false or misleading name or address commits an offence and is liable on summary conviction to a maximum fine of \$10,000.





VI. Assistance to Managers of No Smoking Premises

- (1) Immediate on-site enforcement: In case a smoking person fails to cooperate or appears to behave violently or disrupt the public order despite being advised, the manager may call for the assistance of a police officer to assist in the enforcement of the regulations.

- (2) Enquiry and complaint: For any enquires on the implementation of the above regulations or complaints against any irregularities, the manager may call the Tobacco Control Office of the Department of Health (Enquiry hotline: 2961 8823) for assistance or follow-up investigation.



VII. Frequently Asked Questions

Q1: Is smoking allowed at the bar of open-plan operation in which there is no enclosure at one side adjacent to the street?



A1: If a restaurant has a ceiling or roof and is enclosed at least up to 50% of the total area on all sides (except for any window or door, or any closeable opening that functions as a window or door), it shall be designated as a statutory no smoking area.

Q2: Smoking is prohibited in any indoor area of a cafe, how about the seating accommodation of the cafe located in outdoor areas covered by the sunshades?



A2: Despite the sunshade functions as a cover, the seating accommodation placed outdoors with the enclosure less than 50% of the total area on all sides is not regarded as a statutory no smoking area.





Q3: Certain public places are covered with roofs but enclosed by iron railings, for example, as a public footbridge, is it a statutory no smoking area?

A3: If the public place has no wall round it but only iron railings, it does not meet the requirement of being enclosed at least up to 50% of the total area on all sides, thus it is not regarded as a statutory no smoking area.



Q4: For the ground floor entrance to a commercial building in which there is a ceiling and a wall but no other enclosure, is it regarded as an indoor area?

A4: If the area of the entrance only has a cover and a wall without any enclosure, it is not regarded as an indoor area.



Q5: The ground floor entrance of a commercial building has a ceiling and two side walls (except the closeable opening of a door), is it regarded as statutory no smoking area?

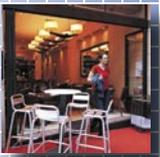


A5: If the entrance has a cover and is enclosed by two side walls except the closeable opening of a door; as the enclosure is at least up to 50% of the total area on all sides, it shall be designated as a statutory no smoking area.

Q6: For a certain cooked-food market using the canvas as cover and lowering the roller screen/tent during rainy days, is it regarded as a statutory no smoking area?



A6: If the restaurant premises have canvas as cover and use the roller screen/tent as enclosure which is at least up to 50% of the total area on all sides, it shall be designated as a statutory no smoking area.



Interpretation

“restaurant premises” (食肆處所) means any premises on or from which there is carried on -

- (a) A factory canteen or restaurant within the meaning of section 31(2) of the Food Business Regulation (Cap. 132 sub. leg. X); or
- (b) any other trade or business the purpose of which is for the sale or supply of meals or unbottled non-alcoholic drinks (including Chinese herb tea) for human consumption on the premises (whether or not it is carried on by a person who is the holder of a licence under the Hawker Regulation (Cap.132, sub. leg. A1)).

“workplace” (工作地方) means a place-

- (a) that is occupied for conducting a business or non-profit making undertaking; and
- (b) in which natural persons work in the course of any self-employment, employment or engagement (whether for income or not), including any part of the place that is set aside for use by those persons during any interval for taking a meal or rest.

“public place”(公眾地方) means-

- (a) any place to which for the time being the public are entitled or permitted to have access, whether on payment or otherwise; or
- (b) a common part of any premises notwithstanding that the public are not entitled or permitted to have access to that common part or those premises.



“**karaoke establishment**”(卡拉OK場所) means -

- (a) a karaoke establishment within the meaning of section 2(1) of the Karaoke Establishments Ordinance(Cap.573); or
- (b) a karaoke establishment referred to in section 3(1) of that Ordinance.

“**indoor**”(室內) means-

- (a) having a ceiling or roof, or a cover that functions (whether temporarily or permanently) as a ceiling or roof; and
- (b) enclosed (whether temporarily or permanently) at least up to 50% of the total area on all sides, except for any window or door, or any closeable opening that functions as a window or door.

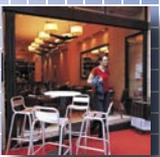
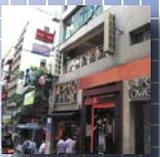
“**bar**”(酒吧) means any place that is exclusively or mainly used for the sale and consumption of intoxicating liquors as defined in section 53(1) of the Dutiable Commodities Ordinance (Cap.109).

“**bathhouse**”(浴室) means a bathhouse-

- (a) that is within the meaning of section 3(1) of the Commercial Bathhouses Regulation (Cap. 132 sub. leg. I); and
- (b) in respect of which there is force a licence granted under that Regulation is in force.

“**mahjong-tin kau premises**”(麻將天九耍樂處所) means any premises that are licensed under section 22 of the Gambling Ordinance (Cap. 148) for -

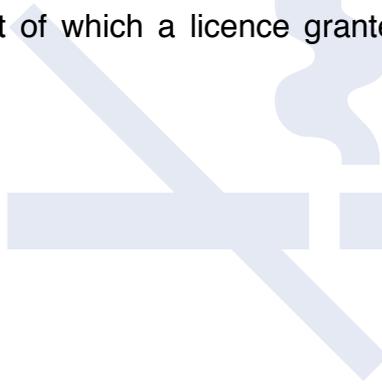
- (a) the playing therein of games in which mahjong tiles are used; or
- (b) the playing therein of games in which tin kau tiles are used.





“**escalator**”(自動梯) means an escalator within the meaning of section 2(1) of the Lifts and Escalators (Safety) Ordinance (Cap. 327).

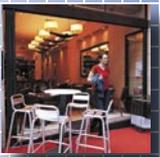
“**massage establishment**”(按摩院) means a massage establishment -
(a) that is within the meaning of section 2 of the Massage Establishments Ordinance (Cap. 266); and
(b) in respect of which a licence granted under that Ordinance is in force.



Appendix II

Types of Designated No Smoking Areas

1. Any cinema, theatre or concert hall
2. Any public lift
3. Any escalator
4. Any amusement game center
5. Any child care centre
6. Any school
7. Any specified educated school
8. Any approved institution
9. Any place of detention
10. Any place of refuge
11. Any reformatory school
12. Any hospital
13. Any maternity home
14. Any public pleasure ground other than a bathing beach





15. The following areas within any bathing beach -

- (a) any part of the waters set aside for the sole use of swimmers under section 10 of the Bathing Beaches Regulation (Cap.132 sub. leg. E) (which includes any beach raft and any other thing on the surface of or above those waters);
- (b) the shore covered with sand or stones, together with any structure, showering facilities or natural feature on such shore; and
- (c) any area specified under section 107(3) of the Public Health and Municipal Services Ordinance (Cap.132) to be used as a barbecue area, camp site or children's play area.

16. The following areas within any public swimming pool -

- (a) any swimming pool;
- (b) any sidewalk immediately adjacent to the swimming pool;
- (c) any diving board or other apparatus or facility adjoining the swimming pool; and
- (d) any spectator stand.

17. The following areas with any stadium -

- (a) any pitch;
- (b) any running track;
- (c) any sidewalk immediately adjacent to the pitch or running track; and
- (d) any spectator stand.

18. The Hong Kong Wetland Park designated under section 24(1) of the Country Parks Ordinance (Cap. 208).

19. An indoor area in -

- (a) any shop, department store or shopping mall;
- (b) any market (whether publicly or privately operated or managed);
- (c) any supermarket;
- (d) any bank;
- (e) any restaurant premises;
- (f) any bar;
- (g) any karaoke establishment;
- (h) any mahjong-tin kau premises;
- (i) any bathhouse;
- (j) any massage establishment;
- (k) any residential care home;
- (l) any treatment center; or
- (m) any communal quarters (as defined in Part 3).

20. An indoor area in a workplace or public place to the extent that it is not an area described in any other item in this Part.

