

立法會
Legislative Council

LC Paper No. CB(2)1473/00-01

(These minutes have been
seen by the Administration)

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**Legislative Council
Bills Committee on Karaoke Establishments Bill**

**Minutes of the first meeting
held on Thursday, 1 March 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon James TO Kun-sun (Chairman)
Hon David CHU Yu-lin
Hon Fred LI Wah-ming, JP
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon LAU Kong-wah
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Audrey EU Yuet-mee, SC, JP

Member Absent : Hon LAU Ping-cheung

Public Officers Attending : Security Bureau
Mrs J CHOK
Deputy Secretary for Security

Mr S H AU
Principal Assistant Secretary for Security

Fire Services Department

Mr C C LEE
Chief Fire Officer/Fire Safety

Mr N H HO
Senior Divisional Officer/Commercial Buildings and
Premises

Buildings Department

Mr K M MO
Assistant Director/New Buildings 1

Home Affairs Department

Mr H K YUEN
Chief Officer (Licensing Authority)

Food and Environmental Hygiene Department

Mr W H CHEUK
Assistant Director (Headquarters)

Mr K S NG
Senior Superintendent (Licensing)

Department of Justice

Mr J D SCOTT
Senior Assistant Law Draftsman

Ms F LAM
Government Counsel

**Clerk in
Attendance** : Mrs Percy MA
Chief Assistant Secretary (2)3

**Staff in
Attendance** : Miss Connie FUNG
Assistant Legal Adviser 3

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Election of Chairman

Mr James TO was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(The Bill; the Legislative Council Brief issued by the Security Bureau)

2. At the invitation of the Chairman, Deputy Secretary for Security (DS/S) briefed members on the Karaoke Establishments Bill (the Bill). She advised that at present, there was no specific control of karaoke establishments, apart from some general requirements applicable to the premises in which the establishments were located. Karaoke business operating in restaurants or within a clubhouse or a hotel or guesthouse was indirectly subject to some form of control under the legislation regulating food business, clubs and hotels or guesthouses. Karaoke establishments which did not operate in restaurants, hotels or clubs could still conduct business with a business registration certificate.

3. Following a major fire at the Top One Karaoke in January 1997, an inter-departmental working group was set up to coordinate efforts to better control karaoke establishments. The working group concluded that the most effective way to institute the necessary fire safety, building and public safety requirements on karaoke establishments was to introduce a statutory licensing system. The Bill sought to implement the recommendations of the working group. It proposed that all establishments providing karaoke facilities, whether attached to restaurants or other licensed premises, should be brought under the control of a licensing scheme administered by a licensing authority, i.e. karaoke establishments should be required to obtain a licence or permit for their operation. The Bill also provided for exemption and transitional arrangements. The major features of the Bill were set out and explained in the Legislative Council Brief issued by the Security Bureau.

4. DS/S added that the Bill was identical to the one introduced into the previous Legislative Council on 15 March 2000, which lapsed at the end of the 1999/2000 legislative session as the previous Council did not have time to scrutinize it.

Fire safety requirements

5. Mr Howard YOUNG asked whether the Administration had taken into consideration the difficulties which might be faced by karaoke establishment operators in complying with the fire safety requirements, such as the requirements to construct fire resistant doors and internal exit corridors etc.

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6. In response, Assistant Director/New Buildings said that the fire resisting construction requirements which would be specified in the regulations would be similar to those laid down in the Codes of Practice published by the Building Authority for different occupancies. The Administration expected that there should be no insurmountable difficulties in compliance.

7. Mr Tommy CHEUNG said that according to the trade, the requirement to provide internal corridors of one-hour fire resistant construction was not necessary for karaoke establishments serving only light refreshment. He added that some large establishments had more than 100 karaoke cubicles and hence the additional costs incurred in meeting the required standard would pose a huge financial burden on the operators.

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8. In order to assess the financial implications for existing business operators, members requested the Administration to provide the cost estimate for the necessary alteration works required to be undertaken to a normal size karaoke cubicle.

9. Mr Howard YOUNG enquired about the reasons for prohibiting the operation of karaoke establishments on basement level 4 or below, or in any industrial building. Chief Fire Officer/Fire Safety responded that it was the established policy that commercial activities which would attract a large number of patrons would not be allowed to take place below basement level 3 of a building for safety reasons. He explained that in the event of a fire in a basement area, it would be difficult for heat and smoke to disperse and people to evacuate swiftly. Furthermore, fire fighting teams would face added difficulties because they have to work their way against smoke and fire before reaching the affected basement level and where radio communication with others on ground level might be blocked. He added that industrial buildings were also considered not suitable for operating karaoke business because these buildings often kept dangerous goods and substances for use of various industrial work processes.

10. The Chairman asked whether karaoke establishments could be operated in industrial-cum-office buildings. The Administration responded that an application would be decided on a case by case basis.

Phased implementation programme for fire and building safety measures

11. In reply to Mr LAU Kong-wah, Principal Assistant Secretary for Security said that the consultant commissioned by the Commerce and Industry Bureau to conduct a Regulatory Impact Assessment on the licensing control of karaoke establishments had recommended that flexibility should be introduced into the regulations to facilitate the application of alternative fire and building safety measures for meeting the required standards. The consultant suggested a phased implementation programme to allow the trade to spread the cost of the

required upgrading works over a longer period of time. He advised that it was intended that for existing karaoke establishments with automatic sprinkler systems, the implementation period for meeting the one-hour fire resistant wall requirement would be extended up to 36 months from the date of commencement of the new legislation, as opposed to 18 months in respect of existing karaoke establishments without sprinkler systems, subject to additional fire safety requirements being met.

The licensing system

12. Members enquired how the proposed licensing scheme would work in practice and what measures would be taken to avoid duplication of efforts of the two licensing authorities, i.e. the Director of Food and Environmental Hygiene and the Secretary for Home Affairs.

13. DS/S said that the Administration would adopt a pragmatic approach in enforcing the licensing system. Under the proposed licensing system, the licensing authority might grant a permit to karaoke establishments located in premises in respect of which a licence or certificate of compliance had been issued under other legislation, i.e. restaurants, clubs, hotels and guesthouses. For karaoke establishments located elsewhere, the operators concerned would be required to apply for a licence. The Director of Food and Environmental Hygiene would act as the licensing authority for karaokes in restaurants or premises serving light refreshment. For karaoke establishments located in premises other than restaurants, the licensing authority would be the Secretary for Home Affairs. The one-stop approach to focus the licensing responsibility on the same authority should help streamline the licence processing procedure and minimize possible duplication of efforts by Government agencies.

14. In response to Mr Howard YOUNG, DS/S said that the standards adopted by the Director of Food and Environmental Hygiene and the Secretary for Home Affairs as licensing authorities would be the same. The licensing requirements would be laid down in detail in the regulations.

15. Mr LAU Kong-wah enquired whether existing and new karaoke establishments serving food and drinks (including alcoholic drinks) would have to apply for a licence/permit under the Bill in addition to the food and liquor licences issued under other legislation. The Administration replied in the positive.

16. In further response to Mr LAU Kong-wah, Assistant Director/Headquarters (AD/HQ) said that in the case of a new restaurant with karaoke applying for the various requisite licences and a permit under the Bill, the applications would be processed concurrently. The time which the operator had to wait before the restaurant could start operation would not be unduly prolonged.

17. In reply to a question from Mr Tommy CHEUNG, DS/S advised that at present there were some 20 karaoke establishments operating in premises in respect of which a business registration certificate had been issued under the Business Registration Ordinance. These were karaoke establishments serving no food and drinks. The Secretary for Home Affairs would be the licensing authority for these establishments.

18. DS/S added that bona fide restaurants would be exempted from licensing under the Bill. These referred to restaurants whose major business was to provide food and drinks for customers and where the karaoke activity was conducted in an area not exceeding 30% of the total seating area of the restaurant and where the number of karaoke cubicles did not exceed its total seating area in square metres divided by 100.

19. Mr Fred LI and Mr Tommy CHEUNG pointed out that some restaurants used mobile audio-visual equipment for conducting karaoke and in some instances the area used for such activity could exceed the 30% threshold limit. DS/S responded that if such activity was conducted only infrequently, the restaurants would not be regarded as a place for the purpose of karaoke by way of trade or business as defined under the Bill. She drew members' attention to the definition of "karaoke establishment" in clause 2 of the Bill.

20. The Chairman requested the Administration to illustrate by way of a flow chart the licensing scheme proposed under the Bill showing the licensing requirements for existing and new karaoke establishments and the corresponding licensing authority.

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Clause 5 of the Bill

21. Ms Audrey EU pointed out that paragraph 9 of the Legislative Council Brief stated that an applicant for a karaoke licence would be required to meet the prescribed fire safety, building safety, public safety and health requirements. However, it appeared that some other factors would also need to be considered. For example, clause 5(6) of the Bill stipulated that the licensing authority might take into account the views of persons whose place of residence or employment was in the immediate vicinity of the place of the proposed operation. Clause 5(3)(c) also required that the grant of the permit or issue of the licence was not contrary to the public interest. She opined that the Administration should clarify the relevant factors which would be considered by the authorities in vetting an application.

22. On the points raised by Ms Audrey EU, the Chairman pointed out that residents living in the vicinity might object to the operation of a karaoke establishment on grounds other than fire safety or building safety, such as concern about spread of vice activities etc. Mr Tommy CHEUNG said that

the power under clause 5(6) must be exercised carefully to avoid chances of corruption and unfair treatment to existing operators. He added that the Administration should also clarify the operation of clause 5(3)(b).

23. AD/HQ said that it was envisaged that clause 5(6) would be implemented in a way largely similar to the procedures adopted for processing applications for liquor licences. The Police would be consulted and the views of local organizations would be sought through the Home Affairs Department. He added that clause 5(3)(a)(i) also expressly required that the licensing authority should not grant a permit or issue a licence unless it was satisfied that the person making the application was a fit and proper person to operate the karaoke establishment.

24. Senior Assistant Law Draftsman (SALD) advised that clause 5(6) was related to clause 5(3)(b) which dealt with the place of the proposed operation of a karaoke establishment. In deciding whether the place and area was suitable for the operation, the licensing authority might find it necessary to take into account the views of people who were living in the immediate vicinity.

25. In response to members, AD/HQ said that a permit required under the Bill was not simply an endorsement attached to a licence issued in respect of a restaurant, clubhouse, hotel or guesthouse. The requirements of the Bill concerning application for a permit applied to both existing and new karaoke establishments located in the above types of licensed premises. He added that the food business licence, the liquor licence and the permit granted for the operation of a karaoke establishment in licensed premises could be held by the same person or by different persons.

26. Mr Andrew WONG said that in his view, the licences and permit issued in respect of a licensed establishment such as a restaurant should be held by one single licensee being a shareholder of the establishment.

27. Having regard to the issues raised by members, the Chairman requested the Administration to further clarify the following in writing -

- (a) why it was necessary for an application for a permit from an existing karaoke establishment (where a separate licence had already been issued in respect of the restaurant, club, hotel or guesthouse in which the karaoke establishment was located) to go through the same procedure as that specified in clause 5(3);

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- (b) the meaning of "suitable place" and "suitable area" referred to in clause 5(3)(b) and how clause 5(6) would affect a decision made under clause 5(3)(b); and
- (c) the meaning of "public interest" in clause 5(3)(c) and how this factor of public interest would come into play in the context of the clause.

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Clause 13(1) and clause 19

28. Mr Tommy CHEUNG and Ms Audrey EU considered that the scope of the powers provided under the above clauses was too wide, and that the Administration should provide sufficient justifications for it. They said that it should be easy for the authorities to determine whether a karaoke establishment was in operation on a particular premises upon inspection of the place. They queried whether it was necessary to provide the authorized public officer with such a wide power as provided for in the Bill, namely, to seize any book, document, apparatus, equipment or any other article in respect of the establishment.

29. SALD said that Part IV of the Bill dealt with supervision of karaoke establishments. Although it might be obvious on the face of it that a certain establishment was a karaoke establishment, the onus was on the prosecution to prove it beyond reasonable doubt. In view of the high standard of proof in criminal proceedings, it was necessary for the clauses to be widely cast as presently drafted, for the purposes of gathering proof and evidence to support a prosecution case. He added that the power of the court under clause 19 to order forfeiture of any apparatus, equipment or any other article applied only on conviction of an offence under the Bill. Furthermore, the exercise of such power was a discretion on the part of the court, and the forfeiture was not mandatory. Similar provisions could be found in other legislation such as the Gambling Ordinance and Amusement Game Centres Ordinance.

30. Mr Tommy CHEUNG pointed out that clause 13(1)(a)(b)(iii) which enabled an authorized public officer to take possession of and remove any article from a karaoke establishment before conviction would render the continued operation of the establishment impossible. He considered that the provision was unfair.

31. The Administration was requested to provide a written reply to -

- (a) explain the justifications for providing the wide powers under clauses 13(1)(a)(b).(ii) to (iv) and 19 and the likely circumstances under which such powers would be exercised; and
- (b) provide a comparison on similar provisions in other ordinances.

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Clause 16(5)

Adm 32. The Administration was requested to explain in writing the justification for the daily fine of \$1,000 per day and advise whether the same penalty was applicable to other similar offences.

Clause 20

Adm 33. In response to members' request, DS/S agreed to provide the draft regulations for the consideration of the Bills Committee as early as practicable. She said that the regulations would be subject to the negative vetting procedure for the scrutiny of subsidiary legislation by the Legislative Council. The regulations would take effect concurrently with the commencement of the Bill after enactment. However, for existing karaoke establishments, a transitional period of 12 months would be granted in the first instance to allow time for their compliance work. Another grace period of 12 months would be given if their licence applications made within the transitional period were then refused.

Consultation

Clerk 34. Members noted that a written submission from The Karaoke Requirements Concern Group on the Bill was tabled at the meeting (circulated after the meeting vide LC Paper No. CB(2)988/00-01(01)). Members agreed that the organization should be invited to give oral presentation at the next meeting. Members also agreed to invite public views on the Bill through newspaper advertisement and press release.

III. Date of next meeting

35. The Chairman said that members would be notified of the date of the next meeting to meet with the Administration and to receive views from the public.

36. The meeting ended at 6:25 pm.

Legislative Council Secretariat
8 May 2001