Paper No. CB(2)1738/01-02(01)

Information requested by the Bills Committee at its meeting held on 20 March 2002 regarding the Karaoke Establishments Bill

The information requested by the Bills Committee is set out in the following paragraphs –

1. **To consider Hon Tommy CHEUNG' view that the term "public interest" in the Bill was too wide and should be qualified with reference to the main objective of the Bill i.e. instituting the necessary fire and building safety requirements on karaoke establishments (KE). (The member requested that the Administration to make reference to the definition of "immediate health hazard" in the Public Health and Municipal Services Ordinance (Cap.132));**

   Please refer to Item 1 of the Administration's response to information requested by the Bills Committee at its meeting held on 7 March 2002 (LC Paper No. CB (2) 1585/01-02 (02)) on "public interest". We are of the view that it is not appropriate to qualify "public interest" in the Bill.

2. **To review the drafting of clause 14(1)(a) as some members considered that "safety" and "promoted" in the clause seemed to be incongruous;**

   As far as the English draft of clause 14(1)(a) is concerned, the provision mirrors those appearing in section 19(1)(a) of the Hotel and Guesthouse Accommodation Ordinance (Cap.349), section 19(1)(a) of the Clubs (Safety of Premises) Ordinance (Cap.376) and section 19(1)(b) of the Residential Care Homes (Elderly Persons) Ordinance (Cap.459).

   As for the Chinese text, the reason for using "安全…獲得保障" instead of the more common rendition of "安全…獲得促進" is because the latter presents a collocation problem. The present version is considered as being able to better reflect the meaning of the clause and is an improvement in terms of collocation of terms as compared with the other existing provisions mentioned in the above ordinances.

3. **To consider members' view that the "directions" given by the licensing authority under clause 14(1), in scope, should be restricted to cover only remedial works necessary to ensure the operation of a KE was in compliance with the licensing conditions and regulations made under the Bill;**

One of the main purposes of serving a notice directing remedial works under clause 14(1) is to ensure that the provisions of the Ordinance (including the licensing conditions and regulation made thereunder) are complied with.

However, in order to better safeguard the safety of persons in a KE, it would not be advisable to restrict the scope of remedial works to only ensuring compliance with the licensing conditions and regulations made under the Bill.

Firstly, some KE may be operating without a licence or permit. These KE are not subject to any licensing conditions or regulations made under the Bill. The policy intention is that safety of persons visiting such KE should also be safeguarded. These KE should be subject to the power of the licensing authority under clause 14.

Secondly, the licensing authority may need to deal with situations where they are sometimes difficult to be classified as "fire hazard" as defined under section 2 of the Fire Service Ordinance (Cap. 95). Examples of these situations include:

- the use of combustible decorations such as Christmas trees, overhanging decorations, polyurethane foam granules to stimulate snowy environment, etc. during festive seasons;
- cooking using gas or liquid fuel inside a KE, e.g. flaming dishes or hot-pots;
- high electricity demand for additional lightings and electrical apparatus for special events;
- buffets held in the KE where food are displayed and warmed by using paraffin wax or alcohol;
- advertisement stands using floral decorations which are highly combustible.

There may be instances where defective concrete is found to be causing danger to persons on the premises. In most cases, time is of the essence and immediate action is required to ensure the safety of persons in a KE. Under these circumstances, the licensing authority

can invoke clause 14(1) to direct remedial works to be carried out to remove the hazard or the repair of the defective concrete without the need to resort to other Ordinances or authority. Clause 14 would be an effective tool for the licensing authority to order removal of the hazard within a short period of time.

4. **To confirm whether it was the policy intent that the "directions" in clause 14(1) and the "notice" in clause 15(1)(a) were meant to be given only to the licensee or the authorized person, as the case might be, and if so, to review the drafting of the relevant clauses to reflect the policy intent;**

In addition to KE issued or granted with a licence or permit, clauses 14 and 15 are also applicable in the following situations:

(a) KE which are already in operation before the commencement of the Bill. They are permitted to continue operation in accordance with the provision of clause 3(3) of the Bill as a transitional measure;

(b) Pre-existing KE mentioned in (a) which continue to operate without a licence or permit after the expiry of the applicable grace period under clause 3(3) of the Bill;

For these types of KE, the notices and orders under clauses 14 and 15 respectively could only be served on the "person being the operator, keeper, manager or otherwise having control of the karaoke establishment" in the absence of a "licensee", "grantee" or "authorized person" as the case may be.

5. **To consider Hon Tommy CHEUNG's view that the service of notices under clause 14(2) should be by registered post addressed to the last known place of business or residence of the person to be served, <u>and</u> by posting the same upon a conspicuous part of the premises concerned. (The member requested the Administration to make reference to the relevant provisions of the Public Health and Municipal Services Ordinance.);**

The Administration's views on service of notices and orders under clause 18 have already been explained in Item 6 of LC Paper No. CB (2) 1585/01-02(03).

Additionally, we would like to point out that provisions for service of notices can be found in many ordinances, such as s. 134 of the Public Health and Municipal Services Ordinance (Cap. 132), s.7 of the Town Planning (Taking Possession and Disposal of Property) Regulation (Cap. 131C), s.32 of the Bedspace Apartments Ordinance (Cap. 447), s.35 of the Buildings Ordinance (Cap. 123), s.15 of the Demolished Buildings (Redevelopment of Sites) Ordinance (Cap. 337), s.39 of the Noise Control Ordinance (Cap. 400) and s.35 of the Urban Renewal Authority Ordinance (Cap. 563). None of these specify that all the methods listed in the relevant sections must be deployed in order for the service to be deemed good.

In the Public Health and Municipal Services (Amendment) Ordinance 2002 (not yet in operation), the requirement for service of notice by registered post and by posting the same at a conspicuous place on the premises is imposed in relation to the making of a closure order. The separate general provision for the service of notices (s. 134) under the Public Health and Municipal Services Ordinance (Cap. 132) remains intact and no amendment has been made.

6. To explain the implementation of the proposed licensing scheme for KE including the role and responsibilities of the Fire Services Department and staffing arrangements;

According to clause 2(1) of the Bill, the licensing authority of the proposed regime will either be the Secretary for Home Affairs or the Director of Food and Environmental Hygiene depending on the circumstances.

In discharging his duties under the Bill, the Secretary for Home Affairs will be assisted by the Office of the Licensing Authority under the Home Affairs Department. The Office of the Licensing Authority is comprised of officers seconded from the Buildings Department and the Fire Services Department and provides a "one-stop shop" service on licensing matters.

As regards the Director of Food and Environmental Hygiene, in addition to staff members of the Food and Environmental Hygiene Department, he would also seek the professional advice of the Buildings Department and the Fire Services Department on licensing matters through well-established channels.

The extra work generated under the proposed licensing regime will be absorbed by the departments concerned without incurring additional

manpower.

7. **To consider whether the District Court should be empowered to direct partial closure of a KE, instead of complete closure under clause 15, if circumstances warranted;**

We propose to amend clause 15 such that the District Court would be empowered to direct a partial closure of a KE, if circumstances warranted.

8. **To consider whether an express provision should be provided in the Bill to stipulate that the closure made under clause 15 would not operate to prevent human habitation on the premises concerned (reference should be made to a similar provision in the Public Health and Municipal Services Ordinance);**

KE is regarded as a type of "place of public entertainment" use for town planning purpose. Human habitation is not permissible nor anticipated in a KE which should be accommodated in the "Commercial" zone or the commercial part of "Commercial/Residential" or "Residential (Group A)" zones.

9. **To consider whether an express provision should be added to clause 15 to the effect that a licensee could apply to request the District Court to withdraw a closure order when requirements of a direction given under clause 14 had been complied with.**

Taking reference from a similar provision in the Fire Safety (Commercial Premises) Ordinance, Cap.502, we propose to amend clause 15 to the effect that a licensee or grantee may apply to the District Court to withdraw a closure order when requirements of a direction given under clause 14 had been complied with, if having requested the licensing authority to discharge the order, the authority either fails to discharge the order within 28 days after the request was made or rejects the request.

Security Bureau
April 2002