

**Information Paper for LegCo Panel on Planning, Lands & Works
Special Meeting on 20 February 2002**

**PROPOSED CHARGING AND PENALTY SYSTEM
FOR STREET EXCAVATION WORKS**

Background

The LegCo Panel on Planning, Lands and Works, at its special meeting on 15 January 2002, requested the Administration to further consult the industry and address its concerns on various issues of the proposed charging and penalty system for street excavation works. On 24 January 2002, we met with the utility operators, the Hong Kong General Building Construction Association Ltd. and on 25 January 2002, the Hong Kong Construction Association.

2. In the meetings, there were open exchanges of views. We have pointed out again that the prime objective of the charging scheme is to enable a better control on street excavations and reduce unnecessary delay in the completion of such works for the overall benefit of the community at large. However, the industry remains concerned on a number of the problems the scheme may face in its implementation. We have made it clear that we are always prepared to work closely together with the industry to build in the proposed legislative amendment a reasonable and practical mechanism so as to reduce unnecessary impact to the industry while maintaining a controllable and enforceable framework to ensure the street excavations are properly and expeditiously carried out.

Major points discussed in the consultation meetings

3. The discussions are summarized as follows.

Reducing the number of street excavations

4. In response to the suggestions from the industry on ways to reduce the number of street excavations, we agree to look into the feasibility of implementing common utility enclosures, e.g. in new development areas. The use of bridges and

flyovers to carry utilities will also be reviewed. The current practice of circulating new roadwork and road reconstruction work proposals to the utility operators at the planning and design stage so that the utility operators can lay new services and spare ducts during the roadwork construction will continue.

Reducing unnecessary delays in street excavations

5. In order to reduce unnecessary delay in the completion of street excavations, we have proposed to the industry the following improvement measures.

- a) Detailed site investigation work to ascertain the underground conditions will be encouraged to improve planning of street excavation works and to avoid delays in such works due to unforeseen underground conditions.
- b) The current 3-month and 6-month road opening restriction periods will be suitably relaxed for projects where the first excavation is for site investigation.
- c) We are working closely together with the utility operators to improve the accuracy of utility records.

Improvement to the excavation permit application procedure and setting of the permit period

6. One of the concerns of the industry is that they cannot start work right away after obtaining an excavation permit since further approvals from other government departments may be necessary. We have advised the industry that the following measures will be implemented to improve the excavation permit application procedure and setting of the permit period.

- a) A streamlined application procedure will be implemented in June this year. With the streamlined procedure, other government departments will process applications without requiring the excavation permit to be issued by Highways Department first, thus reducing the risk of uncertainty during the permit period.
- b) An internet interface will be provided on the utility management system to facilitate more direct exchange of information, and to allow utility operators

and the government departments better access to information in the utility management system.

- c) The setting of the permit period will be fair and open. A balance will be struck between the industry's and the society's interests. In assessing the proposed excavation permit period, the authority will take into account the time restrictions set for the proposed excavation works by various government departments.

Appeal Mechanism

7. The industry has expressed its desire for an effective and fair appeal mechanism be installed for the determination of the permit period, and for certain matters beyond their control.

8. For the determination of permit period, professional engineers of Highways Department will make an initial assessment and notify the utility operators through the utility management system. If the utility operators are not satisfied, they may present their case, within the specified time, to the designated directorate officer of the department for a decision. If the utility operators are still not satisfied with the decision, an appeal panel comprising members of the senior management of the department will review it before a final judgment by the Authority is made.

9. To reduce the number of unnecessary appeal cases, we will establish a set of agreed guidelines in consultation with the utility operators and the contractors to determine the reasonable durations of excavation permits and permit extensions. The guidelines are subject to regular review by a standing committee with relevant government departments, utility operators and contractor associations as members so that the guidelines remain reasonable and practical at all times.

10. We will specify the delays qualified for exemption from economic charge in the proposed legislative amendment, such as late handing over of site, inclement weather, interference by authorities and delays caused by works of another permittee within the permit site being substantiated and proven by permit extension of the other permittee, but the decision by the authority on granting of exemption can be subject to final appeal.

Criminal Liability

11. There is basically no change to the penalty in the proposed legislative amendment as against the existing Land (Miscellaneous Provisions) Ordinance, Cap 28, on the provisions for fine and imprisonment, except that the fine is raised from \$5,000 to \$50,000 to reflect inflation. Copy of section 8 of the existing Cap 28 is annexed for reference.

Annex

Government Department's Position in the Excavation Permit System

12. Government department will be treated the same under the proposed legislative amendment as private utility operators. Government departments also need to apply for an excavation permit and will be subject similarly to excavation permit fees and economic charges. Should government departments contravene any provision in the legislation, they are subject to a reporting mechanism to the Secretary for Works.

Conclusion

13. We will continue to work hand in hand with the industry to iron out any technical difficulties on the proposed legislative amendment, with the objective that on the one hand, nuisance from street excavations can be suitably reduced, and on the other hand, utility operators can enhance their service efficiently to the society in an orderly environment.

Works Bureau
February, 2002

Chapter: 28 Title: LAND (MISCELLANEOUS PROVISIONS) ORDINANCE Gazette Number: 29 of 1998 s. 12
Section: 8 Heading: **Control of excavations in
unleased land** Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 29 of 1998 s. 12

PART III

EXCAVATIONS IN UNLEASED LAND

- (1) Except under and in accordance with a prospecting licence, mining licence or sand removal permit, a person shall not make or maintain any excavation in unleased land, except under and in accordance with an excavation permit issued under this section.
- (2) The Authority may issue an excavation permit authorizing the making of excavations in unleased land.
- (3) An excavation permit shall be valid for the period specified therein, but the Authority may extend the period for which the permit is valid.
- (4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5000 and to imprisonment for 6 months.
- (5) The Authority may, if any person makes or maintains an excavation in unleased land, without an excavation permit, carry out such works as he considers necessary to reinstate and make good the land on which the excavation is made or maintained and any other land the reinstatement and making good of which is, in his opinion, necessary in consequence of the excavation and may recover the cost of any work carried out by him under this subsection from the person who made or maintained the excavation.