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Legislative Council

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From : Clerk to the Legislative Council
To : All Members of the Legislative Council

Council meeting of 22 April 2009

**Proposed resolution under
the Product Eco-responsibility Ordinance and
the Interpretation and General Clauses Ordinance**

Further to LC Paper No. CB(3) 311/08-09 issued on 2 February 2009, the Secretary for the Environment has given notice to move a proposed resolution at the Council meeting of 22 April 2009 under the Product Eco-responsibility Ordinance and the Interpretation and General Clauses Ordinance relating to the Product Eco-responsibility (Plastic Shopping Bags) Regulation. The President has directed that “it be printed in the terms in which it was handed in” on the Agenda of the Council.

2. The proposed resolution is attached for Members’ consideration. The speech, in both English and Chinese versions, which the Secretary for the Environment will deliver when moving the proposed resolution, is also attached.

3. Please note that the Product Eco-responsibility (Plastic Shopping Bags) Regulation was circulated vide LC Paper No. CB(3) 273/08-09 on 7 January 2009. To economise on the use of paper, the Regulation is not attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

PRODUCT ECO-RESPONSIBILITY ORDINANCE
AND
INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION

(Under section 29 of the Product Eco-responsibility Ordinance
(32 of 2008) and section 35 of the Interpretation and
General Clauses Ordinance (Cap. 1))

PRODUCT ECO-RESPONSIBILITY (PLASTIC
SHOPPING BAGS) REGULATION

RESOLVED that the Product Eco-responsibility (Plastic Shopping Bags)
Regulation, made by the Secretary for the Environment on 31
December 2008, be approved, subject to the following
amendments –

- (a) in section 2(1), in the Chinese text, in the definition of “登
記冊”, by deleting the full stop and substituting a
semicolon;
- (b) in section 2(1), by adding –
 - ““criteria for a Type 1 exemption” (第 1 類豁免準則)
means the criteria specified in section 8(3);
 - “criteria for a Type 2 exemption” (第 2 類豁免準則)
means the criteria specified in section 8(5);

“exempted area” (獲豁免範圍), in relation to a registered retail outlet, means an area of the retail outlet that is exempted by the Director for the purposes of section 23 of the Ordinance;”;

- (c) by deleting section 3(4) and substituting –
- “(4) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.”;
- (d) by deleting section 4(2)(a) and substituting –
- “(a) the applicant has not complied with a requirement under section 3(1), (3) or (4);”;
- (e) in section 4, by adding –
- “(5) Before rejecting an application, the Director must –
- (a) give the applicant prior notice in writing of the Director’s intention to do so and the reasons; and
- (b) give the applicant an opportunity to make representations.”;
- (f) by deleting section 6(4) and substituting –
- “(4) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.”;
- (g) by deleting section 7(2)(a) and substituting –
- “(a) the applicant has not complied with a requirement under section 6(1), (3) or (4);”;
- (h) in section 7, by adding –
- “(5) Before rejecting an application, the Director must –

- (a) give the applicant prior notice in writing of the Director's intention to do so and the reasons; and
 - (b) give the applicant an opportunity to make representations.”;
- (i) by deleting sections 8 and 9 and substituting –

“8. Application for exemption of part of the area of registered retail outlets or variation of exemption

(1) For the purposes of section 23(2) of the Ordinance, a registered retailer may apply to the Director for the exemption of part of the area of a registered retail outlet of that retailer, or for the variation of an exemption, based on the criteria for a Type 1 exemption or the criteria for a Type 2 exemption.

(2) An application under subsection (1) must be made in writing and in the specified form.

(3) The following are specified as the criteria for a Type 1 exemption in relation to a registered retail outlet –

- (a) the total floor area of the retail outlet in which only non-specified goods are displayed or offered for sale is more than 50% of the retail floor area of the retail outlet; and
- (b) each part of the area to be exempted is a cashier's counter

that accepts payment for non-specified goods only.

(4) For the purposes of subsection (3), “retail floor area” (零售樓面面積) has the same meaning as in Schedule 4 to the Ordinance.

(5) The following are specified as the criteria for a Type 2 exemption in relation to a registered retail outlet –

- (a) the part of the area of the retail outlet to be exempted is used for the purposes of a business of a third party (not being the registered retailer) registered under the Business Registration Ordinance (Cap. 310);
- (b) that area is demarcated clearly by a counter and is used exclusively for the purposes of the third party’s business;
- (c) the name, trade name, trade mark or brand name of the third party is displayed conspicuously in that area;
- (d) that area is staffed by an employee of the third party; and
- (e) all plastic shopping bags provided from that area bear the name, trade name, trade mark or brand name of the third party.

(6) For an application based on the criteria for a Type 1 exemption, the specified form must be accompanied by a floor plan of the retail outlet indicating –

- (a) any area in which only non-specified goods are displayed or offered for sale; and
- (b) which part of the area of the retail outlet is intended to be exempted, or how an exempted area is intended to be varied, according to the criteria for a Type 1 exemption.

(7) For an application based on the criteria for a Type 2 exemption, the specified form must be accompanied by a floor plan of the retail outlet indicating which part of the area of the retail outlet is intended to be exempted, or how an exempted area is intended to be varied, according to the criteria for a Type 2 exemption.

(8) The applicant may, by giving the Director notice in writing, withdraw the application under this section at any time before it is determined under section 9.

(9) If a change in the information provided to the Director under this section occurs before the determination of the application, the applicant must, as soon as reasonably practicable, give the Director notice of the change in writing unless the application has been withdrawn.

(10) The Director may, by notice in writing, require the applicant to provide further information and documents in connection with the application.

9. Determination of application for exemption or variation of exemption

(1) For the purposes of section 23(3) of the Ordinance, the Director must approve an application under section 8 unless it is rejected under subsection (2).

(2) The Director may reject the application if the Director considers that –

- (a) the applicant has not complied with a requirement under section 8(1), (2), (6), (7), (9) or (10);
- (b) the information provided in relation to the application is incorrect or misleading; or
- (c) the retail outlet does not meet the following –
 - (i) if the application is based on the criteria for a Type 1 exemption, any of the criteria for a Type 1 exemption; or
 - (ii) if the application is based on the criteria for a Type 2 exemption, any of the criteria for a Type 2 exemption.

(3) If an application is approved, the Director must –

- (a) for the purposes of section 23 of the Ordinance, exempt the part of the area of the registered retail outlet, or vary the exemption, as indicated in the application subject to the following conditions –
 - (i) if the application is based on the criteria for a Type 1 exemption, all the conditions set out in subsection (4); or
 - (ii) if the application is based on the criteria for a Type 2 exemption, all the conditions set out in subsection (5);
- (b) give the applicant notice in writing of the decision; and
- (c) specify in the notice the conditions to which the exemption or the variation of the exemption is subject.

(4) For the purposes of subsection (3)(a)(i), if the application is based on the criteria for a Type 1 exemption, the following are the conditions to which the exemption, or variation of the exemption, of part of the area of the registered retail outlet is subject –

- (a) the retail outlet continues to meet the criteria for a Type 1 exemption;
- (b) plastic shopping bags may be provided from such an exempted area without payment of the charge required by section 23(1) of the Ordinance only if –
 - (i) they are provided to customers who make payment for non-specified goods in that area; and
 - (ii) the number of bags so provided is not more than necessary for carrying those goods; and
- (c) such other conditions as the Director may reasonably impose from time to time.

(5) For the purposes of subsection (3)(a)(ii), if the application is based on the criteria for a Type 2 exemption, the following are the conditions to which the exemption, or variation of the exemption, of part of the area of the registered retail outlet is subject –

- (a) the retail outlet continues to meet the criteria for a Type 2 exemption;
- (b) plastic shopping bags may be provided from such an exempted area without payment of the

charge required by section 23(1) of the Ordinance only if –

- (i) they are provided to customers who purchase the goods offered for sale by the third party concerned in that area; and
- (ii) the number of bags so provided is not more than necessary for carrying those goods; and

(c) such other conditions as the Director may reasonably impose from time to time.

(6) The Director must also give the applicant notice in writing of any conditions imposed under subsection (4)(c) or (5)(c).

(7) Before imposing any conditions under subsection (4)(c) or (5)(c), the Director must –

- (a) give the applicant prior notice in writing of the conditions that the Director intends to impose; and
- (b) give the applicant an opportunity to make representations as to why the conditions should not be imposed.

(8) If an application is rejected, the Director must –

- (a) give the applicant notice in writing of the decision; and

(b) include in the notice a statement setting out the reasons for the decision.

(9) Before rejecting an application, the Director must –

(a) give the applicant prior notice in writing of the Director’s intention to do so and the reasons; and

(b) give the applicant an opportunity to make representations.

(10) An exemption, or variation of an exemption, approved under this section applies only to the registered retailer by whom the application is made.”;

(j) in section 10, by renumbering subsection (5) as subsection (6);

(k) in section 10, by adding –

“(5) Before revoking an exemption under subsection (1), the Director must –

(a) give the registered retailer prior notice in writing of the Director’s intention to do so and the reasons; and

(b) give that retailer an opportunity to make representations.”;

(l) in section 11(1)(b), by deleting “9(5)(a)(iii)” and substituting “9(4)(c) or (5)(c)”;

(m) by deleting section 12(3) and substituting –

“(3) The return in respect of a registered retail outlet for each quarter must contain the following information –

- (a) the total number of plastic shopping bags delivered to the retail outlet during that quarter, except for any bags to be provided from an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption;
- (b) the total number of plastic shopping bags provided directly or indirectly to customers during that quarter from –
 - (i) the retail outlet; or
 - (ii) if there is an exempted area in the retail outlet, any area of the retail outlet that is not exempted; and
- (c) the total amount of levies payable for the bags referred to in paragraph (b).

(4) In relation to a quarter in which the application for registration or deregistration in respect of a retail outlet is approved, the return for that quarter must also specify the date on which the retail outlet becomes registered or deregistered.”;

- (n) by deleting section 14(a), (b) and (c) and substituting –
 - “(a) the number of plastic shopping bags provided to a customer in each retail transaction of the retail outlet, except for any bags provided from an exempted area of the retail outlet;

- (b) the amount charged for those bags by the retailer under section 23(1) of the Ordinance;
- (c) the number of plastic shopping bags contained in each shipment of plastic shopping bags to the retail outlet, except for any bags to be provided from an exempted area of the retail outlet that is subject to the criteria for a Type 2 exemption; and
- (d) the number of plastic shopping bags procured by the retailer and relating to each shipment referred to in paragraph (c).”.

**Speech by the Secretary for the Environment
at the Legislative Council on 22 April 2009**

Product Eco-responsibility Ordinance (Cap. 603)

Product Eco-responsibility (Plastic Shopping Bags) Regulation

President,

I move that the Motion under my name, as printed on the Agenda, be passed. The proposed resolution is to approve the Regulation that provides for the implementation details of the environmental levy scheme on plastic shopping bags under the Product Eco-responsibility Ordinance.

2. The Product Eco-responsibility Ordinance was enacted by the Legislative Council in July 2008. The Ordinance is a piece of “framework” legislation that provides a legal basis for implementing producer responsibility schemes in Hong Kong. It is a milestone in the environment agenda and very much reflects the importance and urgency that the Legislative Council and the community attach to environmental protection in general and sustainable waste management in particular.

3. The environmental levy on plastic shopping bags is the first producer responsibility scheme to be implemented under the Ordinance, with a view to addressing the indiscriminate use of plastic shopping bags. As Members may recall, there was a clear consensus when the Ordinance was enacted last year that the levy scheme should be implemented as soon as possible. Indeed, our recent opinion survey indicates that more than 90% of the public agree that there is a need to reduce the indiscriminate use of plastic shopping bags, and some 80% of the public support or strongly support the introduction of an environmental levy to address the problem. In response to this public aspiration on environmental protection, the Administration intends to put the environmental levy scheme into action as a matter of priority. I am therefore particularly grateful to the Madam Chairman and the Members of the Subcommittee on the Product Eco-responsibility (Plastic Shopping

Bags) Regulation under the House Committee, who held six Subcommittee meetings to expedite the scrutiny of the Regulation.

4. As I have committed at the resumption of the second reading debate of the Product Eco-responsibility Bill in July 2008, the implementation details of the environmental levy scheme are worked out in close consultation with the retail trade. In particular, the Administration has had a series of meetings with the Business Facilitation Advisory Committee and its Retail Task Force, the Hong Kong Retail Management Association, as well as major retailers to be covered by the environmental levy scheme. The Administration has also conducted site visits to six warehouses and ten retail outlets of the relevant retailers to better understand the actual operation on the ground. The Regulation represents our efforts to develop an environmental levy scheme that is both effective and business-friendly.

5. I am also thankful to Members of the Subcommittee for their various suggestions, which help improve the regulatory regime further. In particular, we are pleased to propose a number of amendments to the Regulation to take on board the views of the Subcommittee. These amendments include giving a registered retailer or an applicant for registration, deregistration or partial exemption an opportunity to make representations before the Director rejects an application or imposes additional conditions for an exemption or revokes an exemption. We also agree to provide for a second type of exemption in the Regulation so that an area used for the business of a third party within a qualified retail outlet, for instance a cosmetic counter operated by a third party within a department store, may be exempted from the first phase of the environmental levy scheme. To further ensure ease of compliance, we have also obviated the need to report in the quarterly return, and to keep records on, the number of plastic shopping bags distributed from exempted areas.

6. Members of the Subcommittee have also constantly reminded us the dynamic nature of the retail trade. To facilitate the operation of the trade, the Administration has pledged to process an application for registration of a new qualified retail outlet under a registered retailer within ten working days. To accommodate the special needs of an

applicant in unforeseen circumstances, the Administration also agrees to further shorten the processing time for urgent cases as far as practicable. As for a new application for registration of a prescribed retailer, the Administration has pledged to process it within 21 working days. With these performance pledges, as well as the proposed amendments to the Regulation, we trust that we could achieve our environmental goal of reducing the indiscriminate use of plastic shopping bags while minimizing the impact to the trade.

7. I must emphasize that the first phase of the environmental levy scheme is only a beginning. We shall consider how to extend the levy scheme to other retailers in subsequent phases shortly after the implementation of the levy scheme. In the meantime, we very much encourage retailers not yet covered by the environmental levy scheme (such as newspaper vendors) to work with green groups and launch plastic bag reduction initiatives. By working together, we could make the abuse of plastic shopping bags a thing of the past, and make “BYOB” a part of our green living.

8. Hong Kong is facing an imminent and serious waste problem. The implementation of the environmental levy scheme is a key cornerstone of our sustainable waste management strategy. We just cannot afford to wait any longer. I therefore call on this Council to support the Motion. Subject to the approval of this Council, we plan to start the initial registration of retailers within this month and to start the charging of the environmental levy on 7 July 2009.

9. With these remarks, President, I move the Motion.