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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 12 April 2011**

Columbarium development

Purpose

This paper gives an account of the past discussions by the Panel on Food Safety and Environmental Hygiene ("the Panel") on columbarium development.

Background

2. With a growing and aging population in Hong Kong, the number of deaths and the corresponding number of cremations have been rising gradually year on year. According to the Administration, it is projected that the annual number of deaths will increase steadily from 43 700 in 2010 to 52 800 in 2020. The annual number of cremations will also rise from 39 200 in 2010 to 49 600 in 2020 correspondingly. With an increasing demand for cremation service, there is also an increasing need for the supply of niches.

3. At present, in addition to the columbarium facilities run by non-governmental organizations (e.g. the Board of Management of Chinese Permanent Cemeteries), religious entities and the private sector, there are a total of eight public columbaria managed by the Food and Environmental Hygiene Department ("FEHD") providing some 167 900 public niches. About 41 000 public niches, which can accommodate some 80 000 cinerary urns, will also be provided at the new columbarium at Kiu Tau Road within the Wo Hop Shek Cemetery for use in 2012.

4. On 6 July 2010, the Food and Health Bureau ("FHB") launched a public consultation on review of columbarium policy which lasted for about three

months and ended on 30 September 2010. In the consultation document, a package of proposals relating to columbarium policy was made and is outlined as follows:

- (a) Increasing the supply of columbarium facilities – 12 sites in seven districts shortlisted for columbarium use.
- (b) Promoting more environmentally-friendly and sustainable means of handling cremains – (i) use of alternative means of handling cremains (e.g. scattering cremains in Gardens of Remembrance ("GoRs") or in designated Hong Kong waters); (ii) maximization of the use of existing niches (e.g. reminding the bereaved families that a standard size niche space can store two urns); (iii) introduction of an annual management fee for permanent niches/urn grave spaces; and (iv) introduction of an incentive scheme for the return of public niches to the Government for further use in exchange for an ex-gratia allowance.
- (c) Enhancing consumer protection – publication of two lists¹ for members of the public who are considering purchasing private columbarium facilities to make informed choices:
 - List A: mainly setting out the private columbaria compliant with the land lease, and the statutory land and town planning requirements; and
 - List B: other private columbaria not on List A.
- (d) Enhancing regulation of private columbarium development – introduction of licensing scheme.

Deliberations of the Panel

Meeting on 16 October 2009

5. At the special meeting of the Panel on 16 October 2009 to receive a briefing from the Secretary for Food and Health ("SFH") on the 2009-2010 Policy Agenda in relation to food safety and environmental hygiene, members

¹ Private columbaria, pending checking for compliance with the relevant requirements to be included in List A, will be included in List B. Private columbaria confirmed to meet the relevant requirements will be moved to List A.

were advised, amongst others, that the Administration would review the provision of cemeteries, columbaria and crematoria facilities to meet future demand. The Administration would also continue its work on promoting the options of scattering cremated human ashes at sea and in GoRs. Since the new GoRs commenced operation and the procedures for scattering of cremated human ashes at sea were streamlined in 2007, the Administration had handled 538 and 966 applications respectively.

6. Concern was raised as to whether consideration would be given to allowing private columbaria to operate in industrial buildings. There was also a view that the Administration should adopt computerized columbarium operation as practised in Japan. SFH responded that the Administration was looking at other innovative ideas, such as using industrial buildings, for providing columbarium facilities. SFH further advised that he would visit Japan in November 2009 to gain first-hand knowledge of the development and operation of columbarium facilities there.

7. The Administration was requested to formulate clear guidelines on applications for development of private columbaria. SFH advised that FHB would discuss with the Lands Department ("LandsD") on ways to ensure that development of private columbaria could meet demand on the one hand and acceptance of people in the vicinity of the proposed private columbaria on the other.

8. On the question of whether the Administration was exploring the option of limiting the interment of cinerary urns in newly allocated public niches to, say, seven years, to address the shortage of niches, SFH advised that the Administration had no plan to do so.

Meeting on 9 February 2010

9. On 9 February 2010, the Administration briefed the Panel on the latest progress in the development of columbarium facilities in Hong Kong. Members were advised that FHB had set up a Working Group in coordination with the Development Bureau ("DEVB"), the Home Affairs Bureau and various departments to study measures for increasing the supply of columbarium facilities and enhancing protection of the rights of consumers of private columbaria. The Government would adopt all feasible measures to increase the supply of public columbarium niches, including actively identifying suitable locations for the development of public columbarium facilities in different areas in Hong Kong (including urban areas), such as by construction of or conversion into multi-storey columbarium blocks. There had been successful experiences of overseas countries, such as Japan, in using high-rise buildings as columbarium blocks. To better protect the interests of purchasers of private

niches, the Administration was calling on the trade to increase their transparency. The Administration would also look into ways to achieve this end by, say, setting up a voluntary registration system for operators of private columbaria.

10. Concern was raised about the growing number of private columbaria operating on lands/buildings not permitted for columbarium use. According to the Administration, under the Town Planning Ordinance (Cap. 131), the Planning Authority might take enforcement and regulatory actions against any "columbarium" not conforming to the requirements of the land use zoning as specified in the statutory Outline Zoning Plan for the site under concern. Such enforcement and regulatory actions could only be taken in respect of land use in areas covered by the Development Permission Area Plans (i.e. rural areas in the New Territories). There were views from the public that the enforcement and regulatory actions should be extended to areas not covered by the Development Permission Area Plans (i.e. urban areas and new towns). Given the large number of existing high-density development and mixed use buildings in these areas, there were technical difficulties to develop a comprehensive record of existing land use and use of individual floor in these areas for enforcement and regulatory purposes. It was also not the most cost-effective way of utilizing the resources to regulate columbaria business.

11. The Administration further advised that upon receipt of a complaint about operation of columbarium niches in breach of land use requirements stated in the land lease, LandsD would deploy its staff to carry out inspection on the site concerned regardless of whether the land was covered by the Development Permission Area Plans. Legal advice would be sought on the lease conditions which might be involved in the actual circumstances, and follow-up action taken as appropriate. If a site was found to be in breach of the lease conditions, LandsD would take lease enforcement action and request the parties concerned to purge the breach immediately. Where landowners applied for regularizing a breach of land lease requirements, or intended to apply for modification of lease conditions for the provision of columbarium facilities, LandsD would consider and deal with the case. It would normally advise applicants to apply for and obtain the planning permission first, and would consider the views of the relevant departments in the process. If the application was approved, LandsD would include the appropriate conditions for lease modification, and this might entail the payment of a land premium.

12. Some members urged the Administration to introduce a licensing regime to regulate the operation of private columbaria as soon as practicable to enhance consumer protection. The Administration advised that it would not rule out the possibility of doing so. In mapping out the way forward, the Administration would also need to take into account the undesirability of affecting buyers of

niches provided by private columbaria which had operated for a long time but did not comply with the relevant legislation and land lease requirements.

13. On the suggestion of constructing columbaria on outlying islands with small population, the Administration responded that it might not be feasible to do so as ferry companies would have great difficulties in providing adequate ferry service to meet the demand generated by large number of grave sweepers during the Ching Ming and Chung Yeung Festivals.

14. There was a call for the Administration to step up effort on encouraging the public to dispose cremains of their loved ones in designated Hong Kong waters or GoRs. The Administration advised that it had been promoting such alternative ways of burials through the non-governmental organizations operating elderly and end-of-life care services. A promotional video had recently been produced to promote the free ferry service launched by FEHD for scattering cremated human ashes at sea.

Meeting on 6 July 2010

15. At the meeting on 6 July 2010, the Panel was briefed on the public consultation document on the review of columbarium policy issued by the Government.

16. In response to the enquiry about the legislative timetable for introducing a licensing scheme to enhance the regulation of private columbaria, SFH advised that the drafting of amendments to the Public Health and Municipal Services Ordinance (Cap. 132) to provide for the licensing scheme for private columbaria would commence when a consensus on the proposal was reached within the community. It was expected that a lead time of about two to three years would be required for introducing the legislative scheme. As the legislative scheme, if found feasible, would unlikely be completed within a short period of time, a definite timetable could not be committed.

17. Members were dissatisfied with the Administration's failure to provide a concrete timetable for introducing the licensing scheme, and strongly requested the Administration to expedite the implementation of the licensing scheme in order to curb the proliferation of unauthorized private columbaria. SFH responded that the formulation, legislation and implementation of policies with significant implications would require three to four years' time. Before the enactment of the new legislation, relevant Government departments, such as LandsD and the Planning Department ("PlanD"), would continue to take enforcement actions against unauthorized aspects of private columbaria under their respective mandate. To help members of the public who were considering purchasing private columbarium facilities during the interim period

to make informed choices, the Administration would publicize information on whether such facilities occupied Government land illegally as well as whether they were in compliance with the land leases and statutory planning requirements. Apart from publishing the lists, the Administration would also strengthen consumer education on the choice of private columbaria and on the risks of patronizing operators of private columbaria on List B. Members requested the Administration to publicize the two lists for public viewing as early as possible.

18. There were concerns about the time taken by the private columbaria on List B to meet the relevant requirements and whether the number of niches to be supplied in the 12 shortlisted sites proposed in the consultation document could meet the demand in the next 20 years. SFH responded that after the enactment of the legislation, all pre-existing private columbaria would need to produce documentary evidence to the licensing authority to apply for a licence. Applications meeting the licensing conditions would be issued with a licence. In the case of unauthorized private columbaria which had submitted application for regularization of their unauthorized aspects to the respective authorities and were awaiting the outcome, or those who were unsure if they could meet all the licensing requirements, they should apply for temporary exemption so that the operator would be able to continue with the operation in the absence of a licence on a temporary basis. An application for temporary exemption in respect of a private columbarium with unauthorized aspects would not be granted unless the applicant could satisfy the authorities that he/she had a reasonable chance of regularizing his/her operation within a reasonable time, and that his/her operation would not pose immediate safety hazard. The temporary exemption would be time-limited. During its validity period, the operator had to freeze the number of niches and stop further sale of niches before a proper licence was issued.

19. As regards the 12 shortlisted sites for the development of columbarium facilities, SFH explained that it was difficult for the time being to provide information on the number of niches to be supplied by them as their feasibility and appropriateness for columbarium use were being studied. Once a site was confirmed to be suitable for columbarium development, the relevant District Council ("DC") would be formally consulted again. According to SFH, flexible arrangements to promote local acceptance of columbarium development plans such as reserving a certain portion of niches for priority allocation to local residents in need could be considered. The Government would improve the outlook and layout of proposed columbaria through flexible design in order to ease the concern and anxiety of nearby residents. Efforts would continue to be made to identify suitable sites in all districts for columbarium development purpose.

20. Members expressed worry over the proliferation of unauthorized private columbaria arising from the long lead time for implementing the licensing scheme. SFH explained that pre-existing unauthorized private columbaria needed to be allowed a reasonable time for regularization before they could be licensed. In the light of this, application for temporary exemption would be introduced as a transitional measure. The arrangement to publish information on the private columbaria known to LandsD and PlanD could also serve the purpose of deterring unscrupulous traders from further developing unauthorized private columbaria. The short term and long term measures put forward in the consultation document were aimed at curbing the proliferation of unauthorized columbaria, and at the same time minimizing any unnecessary disruption of patrons of columbarium niches. Consideration should be given as to whether the existing arrangement of providing permanent niches/urn grave spaces should be changed so as to relieve the shortage and increase the supply of niches. In this regard, proposals on the introduction of time-limited lease and incentive scheme for the return of niches were being considered.

21. On whether the interpretation of "human remains" under land leases would be clarified to prevent descendents who chose to store the cremains of the deceased at home from contravening the land lease concerned, members were advised that the Administration would take this into account when working out the legislative scheme for regulating private columbaria in future.

22. Concern was also raised about the prevalent practice of operating funeral parlours, which provided burial, encoffining and cremation services, in residential buildings in urban areas such as Hung Hom district. The Administration hoped that the publication of the consultation document would prevent the problem of unauthorized private columbaria from worsening. Operators of existing unauthorized private columbaria should assess whether they had a reasonable chance of regularizing their operation within a reasonable time so as to continue their operation either with a full licence or time-limited temporary exemption in the future. The Administration welcomed views from the public and the stakeholders on the scope and level of regulation under the licensing scheme. To relieve the heavy demand for private niches which was the main reason for the upsurge in the number of unauthorized columbaria, the Administration would continue to make every effort to increase the supply of columbarium facilities.

23. There was a view that the Administration should not shirk its responsibility to ensure adequate supply of columbarium facilities by simply holding on to the argument of meeting objection from DCs. SFH responded that the Administration had placed considerable effort to increase the supply of columbarium facilities in the past few years, but objection from DCs and local communities to the development of columbarium facilities in their districts had

impeded a number of columbarium projects to cope with the public demand.

24. On the suggestion of following the practice of the Mainland authorities by subsidizing the cost of scattering cremains at sea, SFH advised that FEHD had launched a pilot scheme on the provision of free ferry services starting from January 2010 to facilitate the public to scatter cremains in the waters of the east of Tung Lung Chau.

25. The Panel passed a motion urging the Government to expeditiously enact the legislation to provide for a licensing scheme for regulating private columbaria within the current legislative term, and step up its effort in taking enforcement actions to proscribe unlawfully operated private columbaria.

Meeting on 20 September 2010

26. The Panel received views from 53 deputations on the consultation document on review of columbarium policy at the special meeting on 20 September 2010. The deputations expressed concerns over a wide range of issues, but they were generally supportive of introducing a licensing scheme to enhance regulation of private columbaria in the long term. Members urged the Administration to introduce the legislation into the Council within the current legislative term and strengthen enforcement against the unauthorized private columbarium before the implementation of the licensing regime. There were also views that consideration should be given to requiring the existing unauthorized private columbarium to freeze their number of niches and stop further sale of niches. On the timetable for publishing List A and List B, the Administration assured members that the two lists would be available for public viewing before the end of 2010.

Meeting on 15 October 2010

27. Following the Chief Executive's delivery of 2010-2011 Policy Address on 13 October 2010, the Panel was advised by SFH at the meeting on 15 October 2010 that the Administration was consolidating the views collected during the public consultation on review of columbarium policy and would report back to the Panel on the consultation outcome in due course. Members requested an early introduction of the licensing scheme and the Administration's timetable for implementing the scheme. SFH responded that as various sectors of the community had different views towards the implementation of the licensing scheme during the public consultation exercise, it was necessary for the Administration to perform an in-depth analysis on the views collected and conduct local consultation at the next stage. Members of the public were advised to check with DEVB meanwhile on whether a specific columbarium facility was in compliance with the land administration and statutory planning

requirements as well as the land lease requirements. SFH stressed that the Government would continue to adopt all feasible measures to increase the supply of public columbarium facilities and there would be a supply of about 100 000 niches in the next three years.

28. Regarding the timetable for introducing the licensing scheme, the Administration explained that as there were divergent views over the implementation details such as the scope and level of regulation, the Government had to exercise prudence to ensure the appropriateness of the licensing scheme. In the drafting of the legislation, due regard had to be given to the legality of defining private columbaria as those premises/sites which stored human cremains at a charge or return; arrangements for those private columbaria in existence before the enactment date of the new legislation; and conditions for issuing a licence. Members of the public had different views on the issues, particularly in respect of how to deal with the pre-existing private columbaria. The Administration had to find the appropriate point of balance amidst the various points of view expressed by the community and seek the advice of the Department of Justice where necessary. While the timetable for introducing the licensing scheme could not yet be provided, SFH assured members that the Administration would continue its work to draw up the details of the licensing scheme regardless of whether the relevant legislative amendments could be introduced within the current term of the Government.

29. Members enquired about the Administration's timetable for publishing List A and List B. SFH explained that in view of the complexity of the issues involved in assessing whether the land use of each private columbarium contravened the user restrictions in the land lease as detailed therein, the current plan was to publicize part of the information by December 2010. Such information would be updated from time to time as LandsD and PlanD would continue to review suspected cases made known to them to assess if any of those cases should be included in the information. SFH however stressed that the information was not exhaustive in listing out all private columbaria within the territory.

Relevant papers

30. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Relevant papers on columbarium development

Meeting	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	16.10.2009 (Item I)	Agenda Minutes CB(2)41/09-10(01)
Panel on Food Safety and Environmental Hygiene	9.2.2010 (Item VI)	Agenda Minutes CB(2)884/09-10(07) CB(2)884/09-10(08)
Panel on Food Safety and Environmental Hygiene	6.7.2010 (Item III)	Agenda Minutes CB(2)1960/09-10(01) CB(2)1960/09-10(02)
Panel on Food Safety and Environmental Hygiene	20.9.2010 (Item I)	Agenda CB(2)1960/09-10(01)
Panel on Food Safety and Environmental Hygiene	15.10.2010 (Item I)	Agenda CB(2)50/10-11(01)
Legislative Council	27.10.2010	Official Record of Proceedings Pages 98 - 99
	28.10.2010	Official Record of Proceedings Pages 190 -191