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Panel on Security

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 19 March 2011**

Police's handling of public meetings and public processions

Purpose

This paper provides background information relating to the Police's handling of public meetings and processions and summarizes the discussions of the Panel on Security on the subject.

Police's handling of public meetings and processions

Notification system

2. According to the Administration, people in Hong Kong have the right to assemble, to demonstrate, etc. as enshrined in Article 27 of the Basic Law ("BL") and Article 17 of the Hong Kong Bill of Rights ("HKBOR"). It is the Police's duty to facilitate the conduct of lawful and peaceful public meetings and processions.

3. The main statutory provisions regulating public meetings and processions are contained in the Public Order Ordinance (Cap. 245) ("POO"), which provides that a public meeting or procession at which the attendance exceeds the prescribed limit can take place only if notice has been given in accordance with the requirements of POO, and the Commissioner of Police ("CP") has not prohibited or objected to it. CP may prohibit any public meetings or processions if he reasonably considers such prohibition necessary in the interests of national security, public safety and public order, or for the protection of rights and freedoms of others. If the holding of a notified public meeting or procession is considered likely to prejudice the maintenance of public order or to be used for any unlawful purpose, CP must state the grounds

of prohibiting or objecting to a public meeting or procession by way of a written notice and notify the organizers of his decision within a specified time limit (e.g. 48 hours before the commencement of the event if seven days' notice is given). If CP does not issue a notice of objection within the time limit, he is taken to have issued a notice of no objection and the meeting or procession can proceed. CP cannot exercise this power of prohibition if such interests can be met by imposition of conditions. In deciding whether and, if so, what conditions to impose, CP must consider whether such conditions are proportionate.

Appeal mechanism

4. If CP prohibits, objects to or imposes conditions on a notified public meeting or procession, the organizers have a right of appeal to an independent Appeal Board on Public Meetings and Processions ("the Appeal Board") as provided under POO. The Appeal Board may confirm, reverse or vary the prohibition, objection or condition imposed by CP.

Handling of public meetings and processions

5. According to the Administration, upon receipt of a notification about a public meeting or procession, the Police will establish early contact and maintain an active and close communication with the event organizer to provide advice and assistance. The Police's Community Relations Officers may also be present during an event as appropriate to act as a channel of communication between the organizer and the Field Commander. In assessing the crowd/traffic management measures and manpower required for maintaining public safety and public order during the events, the Police will make reference to the information provided by the organizers, past experience in handling similar events as well as other operational considerations.

Deliberations by the Panel

6. The Panel discussed issues relating to the Police's handling of public meetings and public processions at its meetings on 5 June 2007, 2 February and 11 November 2010. The deliberations are summarized in the following paragraphs.

Processing of notifications of public meetings and public processions

7. Arising from the Police's objection to the League of Social Democrats holding a public procession in the evening of 10 March 2007, the Panel on

Security ("the Panel") discussed how the Police processed notifications of public meetings and processions at its meeting on 5 June 2007.

8. Some members queried why objection to the holding of the public procession on 10 March 2007 was made on the ground of low visibility at night. They asked whether visibility was one of the factors considered when CP determined whether to object to an application for public meeting or public procession. They also pointed out that the Korean farmers had staged a number of public meetings and public processions at night when the Sixth Ministerial Conference of the World Trade Organization ("MC6") was held in Hong Kong in December 2005.

9. The Administration advised that as the proposed routing would run through very busy road sections and the procession was scheduled to start in the evening peak hours, the Police objected to the public procession on public safety and public order grounds. Visibility was only one of the factors affecting public safety. The Police had to give regard to the rights and freedom of other members of the public as well as the disruption that the public procession might cause. The Police had suggested that the organizers could advance the public procession to the afternoon of the day but this was not accepted by the organizers. The Administration also informed members that the routing of all public processions held during the MC6 period had been agreed between the organizers and the Police before the public processions were held.

10. On some members' query as to whether the Police would object to all future applications for holding public processions along the same route and around the same time of the day, the Administration advised that each application had to be considered on its own merits and circumstances. Some members expressed concern that this would give an impression that CP could object to the holding of any public procession at his own will.

Measures taken to regulate public meetings and processions

11. The Panel discussed the measures taken by the Police to regulate public meetings and processions at its meetings on 2 February and 11 November 2010.

12. Members were concerned about the protection for Legislative Council ("LegCo") Members and other people not participating in public meetings and processions, and the capability of the Police in handling large-scale public order events outside the LegCo Building in future. They asked whether the Administration had learned any lesson from the public meeting on

16 January 2010 outside the LegCo Building.

13. The Administration stressed that the freedom or right of peaceful assembly and procession was enshrined in Article 27 of BL and Article 17 of HKBOR. It was the Police's policy to facilitate all lawful and peaceful public meetings and processions. As Hong Kong was a crowded place, large-scale public assemblies and processions would affect other people or road users, and might have impact on public safety and order. In this connection, while facilitating the expression of views by participants of processions, it was also the Police's responsibility to maintain public order and ensure the rights of other people to use the public place or road as well as their safety.

14. The Administration emphasized that participants of public processions, in expressing their views to the public, should observe the law and public order. The Police would not tolerate violence during public order events. On occasions where the law was, or was likely to be, violated during public meetings or processions by acts of individuals (especially when there were acts which might cause danger to others or acts which led to a breach of the public order), the Police would, based on the assessment at scene and professional judgment, issue verbal warnings where appropriate. Depending on whether the person involved had ceased the illegal acts and whether his acts led to a breach of public order, or even affected public safety, and the situation, the Police would take appropriate actions at scene. These actions included issuing verbal warnings or orders at scene, collection of evidence for subsequent investigation and consideration of prosecution, peaceful dispersal of the crowd or other law enforcement actions.

15. The Administration further advised that whenever a large-scale public meeting or procession was held, the Police would carry out a review after the event. The aim of the review was to ensure that the tactics deployed and the use of force in the demonstrations and public assemblies concerned were justified and complied with the Police's operational guidelines for regulating public order events. If there were conflicts and confrontations, the Police would investigate into the incidents concerned to ascertain whether there were reasonable grounds to arrest any persons for having breached the laws. The Police would consult the Department of Justice ("DoJ") to ascertain whether there was sufficient evidence for instituting prosecution.

Use of pepper spray against demonstrators

16. Some members queried the propriety of using pepper spray against demonstrators and the effectiveness of the Police's liaison with the organizer of

the public meeting on 16 January 2010. They also queried the effectiveness of the deployment of mills barriers to barricade certain areas and streets in the vicinity of the LegCo Building to stop the demonstrators from marching on the street, which resulted in disputes and confrontations between the demonstrators and the Police. There was a view that the Administration should review its guidelines regarding the deployment of mills barriers during large-scale public order events. To minimize the potential harm that might be caused to demonstrators and Police officers, the Administration should also consider replacing the metal mills barriers with those made of other materials. Some members pointed out that some demonstrators were found cooking with naked flame and selling food within the demonstration area, posing danger to the safety of other demonstrators and people in the LegCo Building and its vicinity. These members considered that while facilitating the expression of views by demonstrators, it was also the Police's responsibility to maintain public order and ensure the safety of other people.

17. The Administration advised that in the evening of 16 January 2010, in view of the large number of demonstrators staging demonstrations outside the LegCo Building, the Police had set up mills barriers in certain areas and streets in the vicinity of the LegCo Building to ensure the safety of the demonstrators, other people, LegCo Members and government officials attending meetings in the LegCo Building. A few police lines were stationed at the mills barriers, which were set up as a basic security measure, to prevent any unauthorized persons from entering the LegCo Building. Late in the same evening, some participants of the public meeting had become antagonistic and besieged the LegCo Building on all sides and blocked the driveway. Taking into account the chaotic situation at that point in time, the Police had deployed pepper spray on the demonstrators when they made several attempts to break through the Police lines by pushing and climbing over the mills barriers. The Police had examined the justifications and propriety of the use of force after the 16 January 2010 incident. The preliminary findings concluded that the Police's use of force during the event was justified and the degree of force used was appropriate.

18. The Police advised that when participants of public meetings or processions started crushing the police defence line by using violence, and after exhausting practicable options to stop the use of violence but Police officers were still unable to control the protestors' active aggression, the Police might resort to the use of pepper spray to defend attack from protestors, or to prevent protestors from charging the Police cordon line. On each of the occasions when pepper spray was used, the relevant officers should give verbal warning first if circumstances permitted. At the conclusion of the operation, Police

officers of Superintendent rank would assess each instance of the use of pepper spray to ensure that all instances were justified.

Use of force in the removal of demonstrators

19. In response to some members' criticism that the Police had used excessive force in the removal of demonstrators, the Administration emphasized that the Police had all along been upholding the principles of exercising maximum restraint and using minimum force in facilitating public order events and dealing with violent incident. According to the Police's internal guidelines on the use of force, a Police officer should display self-discipline and exercise a high degree of restraint when dealing with the public and should not resort to the use of force unless such action was strictly necessary and he was otherwise unable to effect his lawful purpose. Police officers should identify themselves as such and, when circumstances permitted, a warning should be given of the intention to use force and of the nature and degree of force intended to be used.

Communication with organizers of public meetings and processions

20. Members were informed that it was a general practice of the Police to maintain close communication with the event organizers and discuss with them how order could be maintained on the day of the public meeting or public procession. The event organizers were responsible for arranging wardens to maintain order during the public meeting or public procession. Apart from providing advice in advance and agreeing on certain arrangements in relation to the event, a Police Community Relations Officer might also be present during the event to act as a channel of communication between the organizer and the Field Commander. In assessing the crowd management measures and manpower required for maintaining public safety and public order during the event, the Police would make reference to the information provided by the organizer, past experience in handling similar events as well as other operational considerations. For the public meetings on 16 January 2010, the Police stressed that it had maintained communication with the organizer throughout the event.

21. The Police advised that based on the principle of facilitating the expression of views by participants of processions, it would try to accommodate requests from event organizers concerning the use of demonstration objects as far as practicable. At the same time, subject to the arrangements proposed by the organizer as well as physical restrictions of the venue or the demonstration objects, the Police would discuss with the organizer the arrangements of the objects concerned and set them out as conditions in the "letter of no objection"

if necessary. The organizer might lodge an appeal to the Appeal Board if he considered that the conditions imposed by the Police were unreasonable. The Appeal Board would consider and rule on the appeal independently and objectively. Otherwise, the organizer should conduct the public meeting or procession in accordance with the conditions or requirements set out in the "letter of no objection".

22. The Police also advised that during the course of public events, it would, in accordance with the "letter of no objection", facilitate the events to be conducted under peaceful and orderly circumstances on the one hand, and ensure that such events would not jeopardise public order and the safety of people at scene as well as the general public on the other. The Field Commander would make assessment according to the circumstances under which the demonstrations took place. If any demonstration objects carried along or used by protestors were found to be without prior notification, or not in compliance with the conditions set out in the "letter of no objection", and the progression of the event might pose a potential risk to the safety of the persons at scene due to the on-site conditions (e.g. a narrow road with many pedestrians or vehicles), the Police would liaise directly with the organizer/persons concerned and make suitable suggestions and arrangements. If any participant carried along demonstration objects without advance notification, or not in compliance with the conditions set out in the "letter of no objection", the Field Commander would make a professional assessment taking into account the objects, the number of people at scene, as well as the traffic and pedestrian conditions nearby, and decide whether to intervene or to liaise with the person concerned for an acceptable arrangement. In making the decision, the Police had to strike a balance between facilitating expression of views by participants and safeguarding public safety.

Relevant papers

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

**Relevant papers on Police's handling of public meetings
and public processions**

Committee	Date of meeting	Paper
Panel on Security	5.6.2007 (Item VII)	Agenda Minutes
Panel on Security	2.2.2010 (Item V)	Agenda Minutes
Legislative Council	10.11.2010	Official Record of Proceedings
Panel on Security	11.11.2010 (Item III)	Agenda

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