



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (3102 5997)

11 March 2016

Mr Eric CHENG
Principal Assistant Secretary (WKCD)
Home Affairs Bureau
Culture Branch
West Kowloon Cultural District Division
25/F, Wanchai Tower,
Wanchai, Hong Kong

Dear Mr CHENG,

Proposed Resolution under section 37 of the West Kowloon Cultural District Authority Ordinance (Cap. 601) in relation to the proposed West Kowloon Cultural District (Public Open Spaces) Bylaw

We are scrutinizing the legal and drafting aspects of the proposed West Kowloon Cultural District (Public Open Spaces) Bylaw (proposed Bylaw) and should be grateful if you could clarify the following matters:

Section 9 – Domestic animals

- (a) The Chinese rendition of "domestic animal" in section 9 of the proposed Bylaw is "家居動物". However, the Chinese renditions of "domestic animal" are "受飼養的動物" in section 10(2)(b) and (3)(b) of the Dangerous Dogs Regulation (Cap. 167D) and section 47(5) of the Public Health and Municipal Services Ordinance (Cap. 132), and "家畜" in regulation 46(a) of the Road Traffic (Traffic Control) Regulations (Cap. 374G) and section 14(1)(a) and (3) of the Kadoorie Farm and Botanic Garden Bylaw (Cap. 1156A). Please explain why different Chinese renditions are used in these various provisions and consider whether it is appropriate to adopt "家居動物" as the Chinese rendition of "domestic animal" in the proposed Bylaw.

- (b) Under section 9(3) of the proposed Bylaw, a person must not bring a domestic animal into a public open space unless the animal is at all times on a lead, carried in a proper cage or container, or otherwise under the control by other appropriate means of the person responsible for the animal. Who would be considered as the person responsible for the animal? Does it refer to the person bringing the domestic animal into the public open space or the owner of the domestic animal or otherwise?
- (c) Under section 9(7) of the proposed Bylaw, a person who brings a domestic animal into a public open space must remove the animal from the public open space on request by an authorized person. Section 9(8) provides that section 9(7) does not apply to a disabled person who brings an assistance animal into a public open space. Please clarify the meaning of "assistance animal" and consider spelling it out in the proposed Bylaw.

Section 17 – Lost or misplaced property

Any lost or misplaced property which comes into the possession of the West Kowloon Cultural District Authority (Authority) or an authorized person may be disposed of by the Authority by sale or otherwise under section 17(2) of the proposed Bylaw.

Please consider if it is necessary to add a provision to the effect that if within a period of time of any sale or disposal by the Authority, the former owner or the person formerly entitled to the beneficial ownership of the property establishes his ownership to the satisfaction of the Authority, he shall be paid, subject to his providing the Authority with an indemnity as the Authority may reasonably require, the proceeds of sale (if any) less all expenses incurred by the Authority for and incidental to the sale or disposal. Similar provisions can be found in section 11(4) of the Ocean Park Bylaw (Cap. 388B), section 54(2) of the Airport Authority Bylaw (Cap. 483A), section 36(2) of the Mass Transit Railway (North-west Railway) Bylaw (Cap. 556H) and section 50(2) of the Tung Chung Cable Car Bylaw (Cap. 577A).

Section 18 – Prohibition of motor vehicles

- (a) Please consider if it is necessary to provide that the Authority may in such manner as it thinks fit limit the use of any area in a car park to motor vehicles of any description or allocate any area in a car park for use of any person or persons of any particular class and revoke or amend such limitation or allocation. Similar provisions can be found in section 11(1) of the Mass Transit Railway

(Transport Interchange) Bylaw (Cap. 556D) and bylaw 14(1) of the Housing (Traffic) Bylaws (Cap. 283A).

- (b) The Chinese rendition of "emergency vehicle" is "緊急服務車輛" under section 18(2)(b) and (4) of the proposed Bylaw. It appears that the phrase of "服務" in Chinese does not appear in the English text. Please consider whether the English or Chinese text should be amended in order to ensure consistency between the two texts.
- (c) "Emergency vehicle" is defined to mean a vehicle driven by a member of a fire fighting and emergency rescue and assistance service or the Civil Aid Service providing transport in the course of an emergency under paragraph (c) of the definition in section 18(4). As Civil Aid Service provides civil support services on the occasion of any emergency, please consider whether it is necessary to specifically provide for the Civil Aid Service which may overlap with emergency rescue and assistance service as provided for in paragraph (c) of the definition.
- (d) Please clarify whether the Authority will designate traffic signs and signals and prescribe the speed limits for drivers to comply with, and if so, please consider whether these matters should be spelt out in the proposed Bylaw.

Section 21 – Application of Road Traffic (Public Service Vehicles) Regulations

Section 20(1) of the proposed Bylaw provides that the Authority may set aside any land within a public open space and designate such land as a designated road for use by public service vehicles and private buses. Under section 21(1) of the proposed Bylaw, Part IV of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) applies to a public open space subject to the modifications set out therein. Section 21(3) further provides that any person who without reasonable excuse contravenes regulation 33, 34, 35 or 36 under Part IV of Cap. 374D as it applies to a public open space under the Bylaw commits an offence and is liable on conviction to a fine at level 2.

- (a) It is noted that section 21(1) and (3) provides that Part IV of Cap. 374D applies to a public open space whereas section 21(2) refers to a designated road. Please clarify whether Part IV of Cap. 374D applies to a public open space or only designated road as provided for in section 20(1) of the proposed Bylaw.

- (b) Subject to your clarification in (a) above, please also clarify whether other parts of Cap. 374D (i.e. other than Part IV) and the Road Traffic Ordinance (Cap. 374) and its other subsidiary legislation apply to a designated road or a public open space.

Section 22 – Securing of vessels to wharfs of public open spaces

Under section 22(1) of the proposed Bylaw, a person must not, without permission, secure any vessel (including a charter boat, a water taxi or ferry, and a pleasure craft) to any pier, jetty, landing stage or dock attached to or serving a public open space.

Please consider whether the meaning of "pleasure craft" should be spelt out. Reference can be made to the definition of "pleasure craft" in regulation 2 of the Merchant Shipping (Safety) (Means of Access) Regulations (Cap. 369AH) and section 2(1) of the Merchant Shipping (Safety) (High Speed Craft) Regulation (Cap. 369AW).

Section 23 – Enforcement

- (a) Under section 23(2) of the proposed Bylaw, if an authorized person reasonably suspects that a person in a public open space has contravened the Bylaw, the authorized person may, after advising the person of the act or omission that constitutes the suspected contravention, require the person to produce proof of identity and state the person's true address. Section 23(3) provides that a person who fails to produce proof of identity or state the true address under subsection (2) commits an offence and is liable on conviction to a fine at level 1.
 - (i) Please consider if it is necessary to provide that an authorized person may require a person who is attempting to contravene the Bylaw to produce the proof of identity and state the person's true address under section 23(2), and if so, please consider whether this should be spelt out in the proposed Bylaw.
 - (ii) Please clarify whether the "proof of identity" in section 23 has the same meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115), and if so, please consider spelling it out in the proposed Bylaw by making reference to section 4(5) of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600), section 28C(4) of the Product

Eco-responsibility Ordinance (Cap. 603) and section 135(7) of the Lifts and Escalators Ordinance (Cap. 618).

- (b) Under section 23(4) of the proposed Bylaw, an authorized person may require a person to leave a public open space or any part of a public open space if the authorized person reasonably suspects that the person has contravened the Bylaw. Section 23(7) provides that if an authorized person reasonably suspects that a person in a public open space has committed an offence under the Bylaw, the authorized person may require the person to accompany him to the Authority's office, the Park Administration Office or a police station and detain the person until the person is delivered into the custody of a police officer to be dealt with according to law.

Similar to the issue raised on section 23(2) in paragraph (a)(i) above, please clarify whether a person who is attempting to contravene the Bylaw or is attempting to commit an offence under the Bylaw would be covered by section 23(4) and (7) respectively.

Exemption

Please consider if it is necessary to provide for a general exemption to the effect that the Authority may exempt any person, vehicle, vessel or animal from all or any of the provisions of the proposed Bylaw subject to such conditions as the Authority may think fit. Similar provision can be found in section 8 of the Airport Authority Bylaw (Cap. 483A).

I should appreciate your reply in both English and Chinese as soon as possible, preferably before the second meeting of the Subcommittee.

Yours sincerely,


(Vanessa CHENG)
Assistant Legal Adviser

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