



政府總部
民政事務局
香港灣仔
港灣道十二號
灣仔大樓二十五樓

LC Paper No. CB(2)1263/15-16(05)

GOVERNMENT SECRETARIAT

HOME AFFAIRS BUREAU
25/F, WANCHAI TOWER
12 HARBOUR ROAD
WAN CHAI
HONG KONG

Our Ref : SF(72) to HABCS CR 7/1/99/1/1

Tel: 3102 3341
Fax: 3102 5997

By Fax (2877 5029)

11 April 2016

Ms Vanessa CHENG
Assistant Legal Adviser 5
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong

Dear Ms 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

Thank you for your letters of 11 March and 5 April 2016. Regarding the matters raised in your letters, the response from the West Kowloon Cultural District Authority is set out at **Annex**.

Yours sincerely,

(Eric CHENG)
for Secretary for Home Affairs

Encl.

c.c.

Clerk to the Subcommittee (Fax: 2869 6794)

West Kowloon Cultural District Authority (Fax: 2895 0016)

(Attn: Mr Michael RANDALL, General Counsel)

Department of Justice (Fax: 3918 4613)

(Attn: Ms Lonnie NG, Senior Assistant Law Draftsman(II)3 (Acting)

Ms Angie LI, Senior Government Counsel)

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

Response to issues raised by the Assistant Legal Adviser of the Legislative Council

Section 9 – Domestic animals

Part (a)

The Assistant Legal Adviser (“ALA”) asked whether it is appropriate to adopt “家居動物” as the Chinese rendition of “domestic animal” under section 9 of the West Kowloon Cultural District (Public Open Spaces) Bylaw (“proposed Bylaw”), which is different from the Chinese rendition used in other existing legislations.

2. When the West Kowloon Cultural District Authority (“the Authority”) consulted the Legislative Council (“LegCo”) Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District (“WKCD”) Project on the draft Bylaw in March 2015, “家畜” was adopted as the Chinese rendition of “domestic animal”. At the meeting, there were views that “家畜” seemed to suggest livestock were also covered and might not be the best word choice. The Authority advised at the meeting that it would not expect that livestock such as chickens would be brought into the public open spaces in WKCD.

3. During the subsequent discussion between the Government and the Authority on the draft Bylaw, other than the suggestion of “家居動物”, consideration was also given to make reference to the Dangerous Dogs Regulation (Cap. 167D) by using “受飼養的動物”. The Authority considered that “受飼養的動物”, in its literal sense, still seems to include livestock such as chickens, ducks and geese, while “家居動物” literally means animal kept at home which is closer to the Authority’s legislative intent and better responds to LegCo Member’s comments given in March 2015.

4. The Authority has also considered using the term pet “寵物” instead of domestic animal “家居動物”. In this regard, the Authority has considered section 12 of the Pleasure Grounds Regulation (Cap. 132BC) and section 34 of the Tung Chung Cable Car Bylaw (Cap. 577A), where the word pet animal / pet “寵物” is used. However, it seems that the term “pet animal” / “pet” is too restrictive as the Authority wants to be more flexible in the admission of “animal” into the open spaces.

Part (b)

5. The ALA asked under section 9(3) of the proposed Bylaw who would be considered the person responsible for the animal, and whether it refers to the person bringing the domestic animal into the public open space or the owner of the domestic animal or otherwise.

6. The Authority considers that the person bringing the domestic animal into the public open space as the person responsible for the animal.

Part (c)

7. The ALA asked for clarification of the meaning of “assistance animal” under section 9(8) of the proposed Bylaw and whether the meaning should be spelt out.

8. The Authority has considered section 14(2) of the Kadoorie Farm and Botanic Garden Bylaw (Cap. 1156A), bylaw 28 of the Mass Transit Railway By-laws (Cap. 556B) and section 5(7)(h) of the Ocean Park Bylaw (Cap. 388B). These provisions restrict people from bringing animals to the relevant premises with the exemption of “guide dog” for blind person. In some overseas jurisdictions, besides guide dogs for blind persons, there are also dogs trained to assist persons with other disabilities, for example, alerting people who are deaf, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder during an anxiety attack, or performing other duties. The meaning of “assistance animal” under section 9(8) of the proposed Bylaw covers not only guide dogs, but also animals which are individually trained to do work or perform tasks for people with disabilities.

9. Hong Kong legislation does not have a similar provision which defines an “assistance animal”. The Authority would like to avoid pre-empting relevant authorities in Hong Kong in defining assistance animal in the laws of Hong Kong, so the Authority does not intend to set out a definition of “assistance animal” in the proposed Bylaw. Further, the Authority would like to adopt a flexible approach so that it can decide whether an animal should be regarded as an “assistance animal” on a case by case basis. As a result, the Authority does not intend to spell out a detailed list of “assistance animal” in the proposed Bylaw.

Section 17 – Lost or misplaced property

10. The ALA asked whether it is necessary to add a provision in section 17 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.

11. The Authority considers that it is not necessary to introduce the refund provision as suggested.

12. There are different approaches in Hong Kong legislation in respect of lost property handling. For example, section 11 of Ocean Park Bylaw (Cap. 388B) and section 54(2) of the Airport Authority Bylaw (Cap. 483A) contain similar refund provisions as suggested by the ALA, whereas, regulation 19 of the Public Bus Services Regulations (Cap. 230A) and Bylaw 28 of the Peak Tramway By-laws (Cap. 265B) do not contain rights for former owners to claim proceeds of sale of their property.

13. Section 17(3) of the proposed Bylaw protects the Authority against any claim arising out of the sale or disposal of lost or misplaced property by its former owner, as it does not create an automatic right for a former owner of a property to claim refund of the proceeds of sale. It does not prohibit the Authority from refunding such net proceeds. The Authority could still handle any such claims on a case by case basis or introduce guidelines to handle such claims if necessary.

Section 18 – Prohibition of motor vehicles

Part (a)

14. The ALA asked whether 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.

15. The Authority considers that it is not necessary to make such provision. The Pleasure Grounds Regulations (Cap. 132BC), for example, does not have detailed provisions regarding management of car parks. The Authority considers that such limitation of use or allocation of any area of car park, as well as other detailed management and operational matters, could be set out in the terms and conditions of use of the car park instead of in the proposed Bylaw. If considered necessary, the Authority would post these terms and conditions at the entrance of or a notice board within the car park area.

Part (b)

16. The ALA asked whether the English or Chinese text of “emergency vehicle” / “緊急服務車輛” should be amended in order to ensure consistency between the two texts.

17. The Authority considers that the English and Chinese text of “emergency vehicle” / “緊急服務車輛” are consistent. “緊急服務車輛” is a commonly used Chinese rendition for emergency vehicle. For example, in the Road User’s Code published by the Transport Department, the Chinese text for “emergency vehicle” is “緊急服務車輛”. In the Glossary of Terms Commonly Used in Government Departments, the Chinese text for “emergency vehicle” can be “緊急服務車輛” or “緊急車輛”. These terms are used interchangeably.

Part (c)

18. The ALA asked whether it is necessary to specifically provide for the Civil Aid Service under the definition of “emergency vehicle” which may overlap with emergency rescue and assistance service as provided for in paragraph (c) of the definition.

19. The Civil Aid Service provides not only emergency rescue services. It also provides other services such as crowd management and country-side patrolling, see section 4 of the Civil Aid Service Ordinance (Cap. 518). While emergency rescue and assistance service under paragraph (c) may include the Civil Aid Service, for the avoidance of doubt, the Authority considers that it is necessary to include the Civil Aid Service under the definition of “emergency vehicle”.

Part (d)

20. The ALA asked whether the Authority will designate traffic signs and signals and prescribe the speed limits for drivers to comply with, and if so, whether these matters should be spelt out in the proposed Bylaw.

21. The designation of traffic signs and signals and the prescription of speed limits are governed by the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation. Therefore it is not necessary to spell out these matters in the proposed Bylaw. The Authority has considered the Pleasure Ground Regulation (Cap. 132BC), which does not contain provisions to regulate traffic.

22. Further, as the Authority will only allow vehicular traffic, other than emergency vehicles, into the public open space for specific reasons and under conditions to be prescribed by the Authority, there is no reason to regulate such traffic by the proposed Bylaw other than for parts of the public open space adjoining public roads and set aside for bus and taxi stands.

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

Part (a)

23. The ALA asked whether Part IV of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) applies to a public open space or only designated road as provided for in section 20(1) of the proposed Bylaw.

24. The provisions in Part IV of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) apply to the “designated roads” within

the public open space because Part IV empowers the Commissioner for Transport to designate an area of “road” within a public open space for the purposes of stands and stopping places. Therefore, no matter whether the wording of “public open space” or “designated road” is used in section 21, the effect is the same.

Part (b)

25. The ALA asked whether other parts of the Road Traffic (Public Service Vehicles) Regulations (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.

26. Other parts of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) (other than Part IV) and the Road Traffic Ordinance (Cap. 374) and its other subsidiary legislation apply to a designated road within the public open space.

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

27. The ALA asked whether the meaning of “pleasure craft” under section 22(1) should be spelt out.

28. The Authority does not consider that it is necessary to spell out the meaning of “pleasure craft” under section 22(1). “Pleasure craft” refers to any Class IV vessels registered under sections 4 and 6 and Schedule 1 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D). The definition of “pleasure craft” is therefore clear under that regime.

29. Further, pursuant to section 38 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D), the certificate of ownership number shall be painted on, or permanently affixed or to mounted on the vessel. Therefore, it should be apparent whether the subject vessel is a “pleasure craft” or not.

Section 23 – Enforcement

Part (a)(i)

30. The ALA asked whether 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, whether this should be spelt out in the proposed Bylaw.

31. The Authority considers that it is neither necessary nor appropriate to expand section 23(2) to cover situations when a person is attempting to contravene the proposed Bylaw for the following reasons:

- (i) The proof of identity and address are personal information and may be qualified as “personal data” under the Personal Data (Privacy) Ordinance (Cap. 486). The proposed Bylaw should only empower the authorized person to ask for such personal information if necessary.
- (ii) One of the purposes of requiring a person to produce proof of identity and state the true address is to enable the authorized person to report the matter to the Police for further action if appropriate. Therefore, it is only necessary to empower the authorized person to ask for such personal information when the person has contravened the proposed Bylaw.
- (iii) Sometimes it is difficult to define whether a person is attempting to contravene the proposed Bylaw. Therefore, the scope of section 23(2) should not be extended to cover cases when it is unclear whether the person has committed any illegal act yet.
- (iv) Under a similar provision (i.e. Section 14) in the Ocean Park Bylaw (Cap. 388B), a person is only required to produce the proof of identity and state his true address when it is reasonably suspected that he has contravened the Ocean Park Bylaw.

Part (a)(ii)

32. The ALA asked 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, whether it should be spelt out in the proposed Bylaw.

33. The “proof of identity” in section 23 of the proposed Bylaw has the same meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115). The Authority considered that the meaning of “proof of identity” is clear, therefore it is not necessary to spell out in the proposed Bylaw.

34. Further, the Authority notes that section 14 of the Ocean Park Bylaw (Cap. 388B), which contains provisions similar to those under section 23 of the proposed Bylaw, also does not specify the meaning of the term “proof of identity” (身分證明).

Part (b)

35. The ALA asked whether a person attempting to contravene the Bylaw or is attempting to commit an offence under the Bylaw should be covered by section 23(4) and (7) respectively.

36. For the reasons given in the reply at paragraph 31 above, the Authority considered it is neither necessary nor appropriate to expand section 23(4) and (7) to cover situations when a person is attempting to contravene the proposed Bylaw or is attempting to commit an offence under the proposed Bylaw.

Exemption

37. The ALA asked whether 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.

38. The Authority does not consider it necessary to add a general exemption because section 4 of the proposed Bylaw already vests a similar power in the Authority and the authorized person.

Defence of reasonable excuse

39. The ALA asked whether the Authority would consider providing a defence of reasonable excuse for offences punishable with a fine in the proposed Bylaw.

40. The Authority considers that it is not necessary to provide a defence of reasonable excuse for those offences. For example, section 13(1) of the proposed Bylaw requires the public not to conduct certain behaviours in the public open space, such as not to smoke or carry a lighted cigarette, cigar or pipe except in any smoking area (section 13(1)(f)) or cause a nuisance or annoyance to any other person after being requested to desist from such conduct by an authorized person (section 13(1)(g)). The Authority does not contemplate any reasonable excuses which could justify a breach of these provisions.

41. In circumstances where there may be lawful excuses for contravention of the provisions of the proposed Bylaw, express provisions have been made in the proposed Bylaw to provide for such a defence. For example, under section 16(1), it is provided that, except with a lawful excuse, a male person must not enter any part of a public convenience that is allocated for the exclusive use of female persons.

42. In case there are good reasons which justify a departure from the requirements in the proposed Bylaw but are not expressly provided for in the proposed Bylaw, an authorized person may give written or oral permission to relax these requirements pursuant to section 4 under Part 2 of the proposed Bylaw.

43. The Authority has also considered the Ocean Park Bylaw (Cap. 388B), the Kadoorie Farm and Botanic Garden Bylaw (Cap. 1156A) and the Pleasure Grounds Regulation (Cap. 132BC). These legislations also contain similar provisions relating to offences but they do not provide a defence of reasonable excuse (e.g. section 3(3), 5(2), 5(6), 5(8), 6(2), 7(5), 8(4), 9(5) and 12(6) of the Ocean Park Bylaw, section 21 of the Kadoorie Farm and Botanic Garden Bylaw and section 30 of the Pleasure Grounds Regulation).

44. Further, in the event an offence under the proposed Bylaw has been committed, the Authority or the Secretary for Justice would still have to consider whether it is in the public interest to prosecute the offender, see Chapter 5 of the Prosecution Code published by the Department of Justice. If the offender has a reasonable excuse such that

public interest is not served to prosecute the offender, the Authority or the Secretary for Justice would not do so.

West Kowloon Cultural District Authority
April 2016