

立法會
Legislative Council

LC Paper No. CB(2)2478/99-00
(These minutes have been seen by
the Administration and cleared
with the Chairman)

Ref : CB2/BC/23/98

**Bills Committee on
Provision of Municipal Services (Reorganization) Bill**

**Minutes of Meeting
held on Friday, 5 November 1999 at 9:00 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Kenneth TING Woo-shou, JP
Hon HO Sai-chu, SBS, JP
Hon LEE Wing-tat
Hon Fred LI Wah-ming, JP
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, JP
Hon FUNG Chi-kin

Public Officers Attending : Mrs Maureen CHAN
Deputy Secretary for Constitutional Affairs

Mr John LEUNG
Principal Assistant Secretary for Constitutional Affairs

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Mrs N DISSANAYAKE
Senior Assistant Law Draftsman (Department of Justice)

Miss Selina LAU
Government Counsel (Department of Justice)

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2) 2

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Proposed name of the Food and Environmental Hygiene Department
[Paper No. CB(2)297/99-00(01)]

The Chairman informed members that at the last Bills Committee meeting, members had noted that Mr LEE Wing-tat would move Committee stage amendments (CSAs) on behalf of some members of the Bills Committee to change the name of the new Department to "Food and Environmental Health Department". However, the Administration had now provided a detailed paper to explain its position that "Food and Environmental Hygiene Department" was considered the appropriate name for the new Department and requested further discussion of the issue at the meeting. The paper had been issued to members before the meeting vide Paper No. CB(2)297/99-00(01).

2. At the Chairman's invitation, Deputy Secretary for Constitutional Affairs (DS(CA)) briefed members on the Administration's arguments in the paper. She appealed to members to reconsider the issue and accept the Administration's proposal.

3. The Chairman sought members' views as to whether the Bills Committee should reconsider the issue in the light of the Administration's detailed explanation. Mr HO Sai-chu, Dr TANG Siu-tong and Mr CHAN Wing-chan supported re-opening the issue for discussion since the Administration had provided a detailed paper explaining its position. Mr LI Wah-ming disagreed, saying that the Bills Committee had already taken a decision by voting on the issue at a previous meeting.

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4. The Chairman explained that there was a tie vote at the meeting on 29 October 1999, although he had indicated his personal preference of renaming the Department as proposed by the Hong Kong Public Health Inspectors' Association. As the Administration had now provided more information on the matter, he suggested members to take a vote to decide whether the Bills Committee should reconsider the issue of changing the name of the new Department to "Food and Environmental Health Department". A vote was therefore taken by a show of hands. Eight members voted for the proposal of re-opening the issue for discussion by the Bills Committee, while one member voted against the proposal. The Chairman therefore advised that the issue be re-opened for discussion.

5. The Chairman then invited members' views as to whether the Bills Committee should move CSAs to amend the name of the new Department as "Food and Environmental Health Department". Mr Howard YOUNG said that he supported the Administration's view that "environmental hygiene" was the appropriate name for the new Department because "environmental health" encompassed a much broader range of functions than those to be performed by the new Department. Mr CHAN Kam-lam also supported the use of "environmental hygiene" which was more compatible with the responsibilities of the new Department. However, Mr LI Wah-ming held a different view and reminded the meeting that a relevant committee of the Provisional Urban Council was named "Public Health Select Committee" and not "Public Hygiene Select Committee", and that government officials performing relevant functions were called "health inspectors" and not "hygiene inspectors". Mr Ambrose CHEUNG said that he was unconvinced of the Administration's arguments as the existing municipal services departments were already performing some of the environmental health duties.

6. In view of the different views expressed by members, Mr HO Sai-chu requested the Bills Committee to take a vote again on the issue. The Chairman therefore ordered a vote to be taken on whether the Bills Committee should propose CSAs to rename the new Department as "Food and Environmental Health Department". A vote was taken by a show of hands. Three members voted for and seven against the proposal. The Chairman advised that the Bills Committee decided not to propose any CSAs in this respect.

7. Mr LEE Wing-tat said that he was greatly disappointed that members had decided to rescind the Bills Committee's original decision in respect of the name of the new Department. He was also dissatisfied with the Administration's unusual steps in seeking to rescind the Bills Committee's original decision on the issue.

II. Draft Committee stage amendments (CSAs) to be proposed by Members

CSAs to be proposed by Hon LI Wah-ming

[Paper Nos. CB(2)245/99-00(03) and CB(2)299/99-00(01)]

8. At the Chairman's invitation, Mr LI Wah-ming briefed members on his revised proposed CSAs (as at 4 November 1999) which were tabled at the meeting and subsequently issued vide Paper No. CB(2)299/99-00(01).

Food Business Regulation (Paragraph 256 in Schedule 3)

9. Members noted that Mr LI Wah-ming proposed to add "unreasonable" before "deviation" under section 34(a) of the Food Business Regulation to protect the interest of the industry. Mr Howard YOUNG and Mr Ambrose CHEUNG expressed support for Mr LI's proposed amendment. Mr Ambrose CHEUNG pointed out that the existing Urban Council By-laws used "material deviation" instead of "any deviation" as proposed in the Bill.

10. DS(CA) informed members that the proposed Regulation was based on the Regional Council By-laws. She said that the Administration had no strong views against Mr LI's proposed amendment, but considered that "material deviation" might be more appropriate because "unreasonable" was a fairly subjective term. In response to Mr LI, Senior Assistant Legal Adviser (SALA) advised that "material deviation" was commonly found in other legislation and would be easier to enforce. If "unreasonable deviation" was to be adopted, it would be up to the court to decide whether a deviation was "unreasonable" or not. Mr LI accepted the legal advice and the Administration's suggestion, and agreed to revise his proposed amendment accordingly.

Offensive Trade Regulation (Paragraph 462 in Schedule 3)

11. Members noted that section 10(m) of the Offensive Trade Regulation imposed a new licensing condition on the trade in existing Urban Council area regarding heating equipment. Mr LI Wah-ming proposed to provide a 12-month grace period for compliance with the new licensing condition. Members in general expressed support for the proposed amendment. DS(CA) said that the Administration had no objection to Mr LI's proposed amendment but suggested that the drafting might need improvement. For example, the amendment would need to define "urban area" and to specify the authority for granting exemption to existing licence holders. Mr LI said that he would revise his proposed amendments accordingly.

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Stadia Regulation (paragraph 690 in schedule 3)

12. Members noted that Mr LI Wah-ming proposed to remove the power of a stadium manager or any authorized staff member to direct a person to leave a stadium, if the person had committed or was about to commit an offence under the Summary Offences Ordinance (Cap. 228). Mr LI said that it would be difficult for the stadium manager to refuse entry of any person on such grounds.

13. DS(CA) said that the Administration did not agree to the proposed amendment. DS(CA) explained that the municipal services departments considered such power necessary for maintaining public order and protecting public safety in stadia. The provision would enable the stadium manager to prevent persons bringing into the stadium weapons and items which could cause danger and disorder.

14. Responding to Mr LI Wah-ming and Mr Ambrose CHUNG, SALA advised that police officers on the spot would still have the power to remove a person whom they believed was about to commit an offence under the Summary Offences Ordinance even if the stadium manager was not given such power. As regards the adequacy of the stadia rules in restricting behaviour of persons in the stadia, SALA pointed out that rules could not be exhaustive of all situations, and that the powers of the stadia manager or any authorized staff member would be limited by the amendment.

15. Dr TANG Siu-tong and Mr CHAN Kam-lam said that it was not always possible to have police officers around in the stadium. They considered that the stadium manager or any authorized staff member should be adequately empowered to manage the stadium and to maintain public order in a stadium for the safety of other users. They therefore expressed reservation about Mr LI's proposed amendment.

Municipal Services Appeals Board Ordinance (Paragraph 5 in Schedule 4)

16. Members noted that Mr LI Wah-ming proposed to include two District Council (DC) members in the Municipal Services Appeals Board (MSAB), as representatives of community opinions, in place of the Provisional Municipal Council (PMC) members. On the operation of such arrangement, Mr LI Wah-ming said that DC members could serve on MSAB on rotation. Mr Ambrose CHEUNG said that he supported the proposed amendment in principle but the implementation arrangements would need further consideration.

17. DS(CA) informed members that seven out of 21 existing MSAB members were District Board members and the arrangement would continue. As the PMC members now sitting on MSAB were to advise on the relevant policies of the PMCs, the Administration did not consider that DC members could perform the

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same role. The Administration also had doubts on the practical arrangement given that there would be 521 DC members competing for two seats in MSAB. The Administration therefore did not agree to the proposed amendment. Mr Ambrose CHEUNG said that the Administration would only need to agree to the principle of the amendment while the actual arrangement for appointment of DC members to the MSAB could be further deliberated.

18. Mr CHAN Kam-lam and Dr TANG Siu-tong also expressed concern about the practical difficulties in selecting DC members to sit on the MSAB. They did not consider the proposed amendment necessary. Mr CHAN added that it might not be of advantage to MSAB because expertise could not be developed if DC members were to serve on rotation. As for representatives of community opinions, Mr CHAN said that there were alternatives other than DC members.

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19. Mr LI Wah-ming asked whether the Administration would give an undertaking that at least one DC member would be included in the sitting for hearing an appeal case. DS(CA) said that the Administration would have to consult the MSAB secretariat to see whether such arrangement was feasible and would revert to members as soon as possible.

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20. Mr LI Wah-ming further suggested that for the purpose of developing expertise, an amendment could be made to the effect that the Chairmen or Deputy Chairmen of the 18 DCs could take turn to serve on MSAB in place of the PMC member. DS(CA) said that appointment to the MSAB was previously based on the merits of individual members, and the Administration's proposal had already provided flexibility in the appointment of MSAB members. Nevertheless, she agreed to consider Mr LI's suggestions.

CSAs to be proposed by Hon LEE Wing-tat
[Paper No. CB(2)297/99-00(02)]

21. At the request of Mr LEE Wing-tat, members agreed to discuss his proposed CSAs at the next Bills Committee meeting on Monday, 8 November 1999 at 10:45 am.

CSAs to be proposed by Hon Ambrose CHEUNG

22. Mr Ambrose CHEUNG informed members that he was still working on his CSAs and could only provide the draft by 10 November 1999 the earliest. At his request, members agreed to hold a further meeting on Friday, 12 November 1999 at 8:30 am. to discuss Mr CHEUNG's proposed CSAs.

III. Any other business

Outstanding policy issues to be discussed by the Bills Committee

23. Members noted that a letter dated 4 November 1999 from Chairmen of the Provisional Urban Council and the Provisional Regional Council had been tabled at the meeting (the letter was subsequently issued to members vide paper No. CB(2)299/99-00(03)). The Chairman advised that a number of the policy issues raised in the letter overlapped with the list of policy issues drawn up by Mr Ambrose CHEUNG [Paper No. CB(2)2124/98-99(01)]. The Chairman said that most of these issues had already been discussed during clause-by-clause examination of the Bill. The remaining issues were more of an operational nature and the Administration had undertaken to review the relevant policies after reorganization. Given the time constraint for the scrutiny of the Bill, he had reservation that the Bills Committee should continue to discuss policy matters which were not directly related to the Bill.

24. Mr Howard YOUNG and Mr Kenneth TING agreed with the Chairman. They considered that the policy issues raised by Mr Ambrose CHEUNG could be followed up by the Legislative Council (LegCo) at a different forum. Mr Howard YOUNG suggested that the Administration should give an undertaking that it would discuss with relevant LegCo Panels these policies after reorganization. Miss CHOY So-yuk also requested the Administration to undertake to include all relevant policy issues in the overall policy review after reorganization.

25. Mr Ambrose CHEUNG was of the view that the Bills Committee should not be constrained by the legislative timetable set by the Administration and that the Bills Committee should continue to discuss any outstanding policy issues where necessary. Mr LEE Wing-tat said that the Administration should provide a response to the letter of the Chairmen of the PMCs. He stressed that the Bills Committee had already done its utmost to hold as many meetings as possible in order to complete scrutiny of the Bill within the unreasonable timeframe imposed by the Administration. Mr Ambrose CHEUNG and Mr LI Wah-ming also drew members' attention that the Chairman of the United Nations (UN) Human Rights Committee had expressed concern about the proposed abolition of municipal councils during the recent UN hearing of the HKSAR Report on the International Covenant on Civil and Political Rights. They said that members might wish to consider the Concluding Observation to be issued by the United Nations Human Rights Committee.

26. The Chairman reminded members that the Bills Committee had agreed at its first meeting that it would not discuss the fundamental policy issue relating to abolition of municipal councils. He advised that the Bills Committee had the responsibility to examine the Bill as assigned by the House Committee with

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regard to the reality that the terms of office of the PMCs would lapse on 1 January 2000. He pointed out that according to the Rules of Procedure, the Bills Committee should consider the general merits and principle, and the detailed provisions of the Bill, and then report to the House Committee and the Council on its deliberations after completing scrutiny of the Bill. It would be unrealistic to expect the Bills Committee to reach agreement with the Administration on all policy issues which would be dealt with by the Administration under the new structure. As regards the new administrative structure, he reminded members that the Bills Committee had decided at the meeting on 26 October 1999 that the staffing matters would be further discussed by the Finance Committee and its Establishment Subcommittee.

27. The Chairman further advised that the Bills Committee could recommend rejecting the legislative proposals put forward by the Administration in the Bill if members considered that there was no merit in the Administration's proposal. As the Administration had indicated its intention to resume Second Reading debate on the Bill on 1 December 1999, the Bills Committee would need to report to the House Committee on 12 November 1999.

28. Mr CHAN Kam-lam expressed support for the Chairman's suggestions. DS(CA) said that the Administration highly appreciated the Bills Committee's co-operation and efforts in expediting scrutiny of the Bill, and the Administration had taken on board many suggestions put forward by members to improve the Bill. She stressed that the primary objective of the Bill was to transfer the functions and powers of the PMCs to designated public officers, and that significant policy changes would not be proposed during reorganization. She assured members that the Administration would consult LegCo should there be policy changes in future. DS(CA) also undertook to provide written response to issues raised at the meetings on 22 October and 29 October 1999, and to the letter from the PMC Chairmen.

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29. The meeting ended at 11:35 am.

Legislative Council Secretariat
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