

立法會
Legislative Council

LC Paper No. CB(2)2500/99-00
(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, 12 November 1999 at 8:30 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 Fred LI Wah-ming, JP
Hon Ronald ARCULLI, JP
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Cyd HO Sau-lan
Hon LEE Wing-tat
Hon James TO Kun-sun
Hon Jasper TSANG Yok-sing, JP
Hon CHOY So-yuk
Hon FUNG Chi-kin

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

Mr John LEUNG
Principal Assistant Secretary for Constitutional Affairs
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. Draft Committee Stage amendments (CSAs) to be proposed by Members

The "One Council, One Department" proposal of Mr Ambrose CHEUNG
[Paper No. CB(2)349/99-00(01)]

At the invitation of the Chairman, Mr Ambrose CHEUNG briefed members on his "One Council, One Department" proposal as an alternative to the framework proposed by the Administration. He proposed that while Government should be responsible for territory-wide policies and functions relating to food safety, a municipal council should be retained to deliver services on environmental hygiene, culture and leisure. The proposed Council would comprise 80 elected members, 59 by direct election, 18 elected from each District Council (DC) and three would be representatives of Heung Yee Kuk. The proposed Council would be assisted by a municipal services department in the delivery of such services. Mr CHEUNG said that the proposed Council and Department would be funded through a one-line vote to be approved by the Legislative Council (LegCo). He pointed out that such an arrangement would facilitate LegCo and the public in monitoring the work of the Municipal Council.

2. Deputy Secretary for Constitutional Affairs (DS(CA)) noted that Mr Ambrose CHEUNG had only provided the English version of his draft CSAs. She reiterated that the Administration was opposed to the "One Council, One Department" proposal. She explained that Mr CHEUNG's proposal did not address the problem of fragmentation of responsibilities for food safety and environmental hygiene, which could lead to inefficiency and ineffective

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coordination in the provision of such services. DS(CA) emphasized that the proposed CSAs, when read with the Bill, did not constitute a comprehensive or coherent legislative scheme for a new structure to function properly. For example, the government structure did not have a post of the Director of Food as proposed by Mr CHEUNG and that the draft CSAs did not contain provisions for the election of the proposed Council members. She stressed that Mr CHEUNG's proposal was incompatible with the provisions in the Bill.

3. Mr Ambrose CHEUNG said that he totally disagreed with the Administration's arguments. He said that the fragmentation of responsibilities could be addressed with the proposed Council taking over the powers and functions of the new Environment and Food Bureau. He added that his proposal could also be modified to enable the existing Director of Health to take over the powers and functions of the proposed Director of Food. He explained that due to lack of resources and insufficient time, he had not been able to provide the Chinese version of his draft CSAs.

4. The Chairman pointed out that all Provisional Municipal Council members were now appointed by the Chief Executive, and that no legislation existed for the election of Municipal Council members. He advised that Mr CHEUNG would need to draw up detailed provisions for the election of these members and include consequential amendments to the existing District Councils Ordinance and Heung Yee Kuk Ordinance. Mr CHEUNG said that the future election of Municipal Council members could model on DC election and he envisaged no difficulties in drawing up the detailed provisions for the election arrangements.

5. Dr TANG Siu-tong said that the Government, rather than the PMCs, should be held responsible for the existing fragmentation of responsibilities and ineffective co-ordination in food safety. He considered Mr CHEUNG's proposal feasible in principle and that the technical issues could be resolved. Mr Howard YOUNG noted that Mr CHEUNG's proposal did not provide for the control of drugs. Mr Ambrose CHEUNG explained that his proposal was based on the existing government structure which had not provided a combined authority for the control of food and drugs.

6. The Chairman sought clarification from Mr CHEUNG as to whether the proposed Municipal Council would be a body corporate and who would be the fund controlling officer. Mr CHEUNG replied that it would be a body corporate with financial autonomy and the Secretary for the Treasury would be the fund controlling officer.

7. The Bills Committee noted the features of Mr CHEUNG's proposal without taking a position on its feasibility and desirability, as Mr CHEUNG would modify his draft CSAs after the meeting.

Other CSAs to be proposed by Mr Ambrose CHEUNG
[Paper No. CB(2)382/99-00(01)]

8. Members noted that Mr Ambrose CHEUNG was considering proposing other CSAs to the subsidiary legislation of the Public Health and Municipal Services Ordinance (Cap. 132) and the composition of the Liquor Licensing Board but the text of these CSAs was not yet available. At the Chairman's invitation, Mr Ambrose CHEUNG briefed members on the rationale of his proposals which were set out in a table [Paper No. CB(2)382/99-00(01)].

9. Mr Ambrose CHEUNG informed members that he might consider amending "責任" to "法律責任" in clauses 4(1), 5(2)(c) and 5(3) of the Bill on the grounds that Government should take over all liabilities, in addition to the legal liabilities of the Provisional Municipal Councils (PMCs) after their abolition. These would include the capital works already approved by PMCs but not yet started. The Chairman queried whether the proposed amendment would achieve any purpose because "liabilities" in the context of the relevant provisions would mean "legal liabilities". Senior Assistant Law Draftsman also pointed out that "liabilities" could only mean liabilities which were enforceable in law and therefore could not cover moral responsibilities. Senior Assistant Legal Adviser (SALA) expressed a similar view.

10. Mr Ambrose CHEUNG informed members that about 80 to 90 capital projects had received approval from PMCs but the contracts were not yet signed. He was worried that these projects might be delayed indefinitely after the abolition of PMCs. Mr CHEUNG therefore urged the Administration to give an undertaking that those capital projects already approved by PMCs would proceed as planned if the PMCs were abolished. Responding to the Chairman, DS(CA) pointed out that it was Government policy that all capital projects would require the approval of the Public Works Subcommittee (PWSC) and Finance Committee of the LegCo for inclusion into Government's Public Works Programme. The Chairman asked whether the Administration would give an assurance during resumption of Second Reading debate that all outstanding capital projects of the PMCs would be submitted to the PWSC for consideration. DS(CA) replied that the Administration would conduct a review of these capital projects with regard to the need of the territory following abolition of PMCs, before submitting proposals to the PWSC. Principal Assistant Secretary for Constitutional Affairs (PAS(CA)) added that for those projects which the Government would have contractual liability, Government would definitely seek LegCo approval for the necessary funding. However, for those projects which were still in the planning stage, they might need to compete with other government capital works projects for priority subject to the availability of funds. As the follow up of PMC projects fell outside the scope of the Bill, Mr

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CHEUNG said that he would raise the issue at the House Committee meeting in the afternoon.

Further CSAs to be proposed by Hon LI Wah-ming
[Paper No. CB(2)376/99-00(02)]

11. At the invitation of the Chairman, Mr LI Wah-ming briefed members on his further CSAs.

Public Health and Municipal Services Ordinance (Cap. 132)
(Paragraph 61 in Schedule 3)

12. Members noted that Mr LI Wah-ming proposed to amend section 124D of the Ordinance to the effect that the public could appeal to the Municipal Services Appeals Board (MSAB) against any proposal for adding any facility which was directly related to the burning of human remains in a government crematorium. Mr Howard YOUNG expressed concern that the proposed amendment as presently drafted would also cover minor alteration to existing exhumation facilities. SALA advised that the phrase "directly related to the burning of human remains" had been added to the proposed amendment to exclude minor alterations.

13. PAS(CA) said that the Administration had reservation on the proposed amendment as it would expand the jurisdiction of MSAB to cover objections. He said that there were already adequate channels for parties affected to voice their opinion or objection as the relevant DC would be consulted on such proposals where the proposed facility would have significant impact on local environment. Moreover, these proposals would also likely be discussed at the relevant LegCo Panel and require Finance Committee approval for funding.

14. Mr LI Wah-ming did not accept the Administration's explanation. He pointed out that projects of an estimated expenditure below HK\$15 million could be approved by the Government internally. Mr LI said that residents in the vicinity of public crematoria were concerned about the air pollution and smell caused by the burning of human remains. As the existing PMCs had provided a channel for parties concerned to raise objections on such matters, he considered that a similar channel should be provided under the new structure.

15. The Chairman pointed out that the objection procedure referred to by Mr LI was only applicable to section 124C(c) of the Ordinance, i.e. use of crematoria in a building or a place in respect of which the Authority should have granted special and written permission. In this connection, SALA advised that Mr LI proposed to amend also the heading of section 124D to add "or adding facilities in an existing crematorium" after "certain locations" to include Government crematorium or an authorized private crematorium. The Chairman advised that

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the proposed amendment might not serve the purpose, in the absence of an application and objection procedure for a building or a place to be used as a Government or private crematorium. It was also appropriate for MSAB to hear appeals on the addition of exhumation facilities before an objection procedure was put in place. Mr LI noted the comments and would review the wording of his proposed amendments.

Public Markets Regulation (Paragraph 615 in Schedule3)

16. Members noted that Mr LI Wah-ming proposed to amend section 6A of the Public Markets Regulation so that a market stallholder could appeal to MSAB on rental adjustments within 30 days on receipt of the notice. Members also noted that the Administration had already agreed to expand the jurisdiction of MSAB to cover appeals against the decision to terminate the lease, licence or permit of a market stall.

17. Members noted that normally three months notice would be given for adjustments of market stall rental. Mr Howard YOUNG remarked that given the three months' advance notice, a shorter period could be allowed for a market stallholder to appeal to MSAB. Dr TANG Siu-tong however indicated support of the 30 days period for appeals.

18. Dr TANG Siu-tong informed members that he was the Chairman of the Provisional Regional Council's (ProRC's) Market Stall Rental Review Subcommittee. He pointed out that the proposed amendments would increase the workload of MSAB tremendously and would cause operational difficulties. The Chairman also expressed concern that MSAB did not have the expert knowledge to determine market stall rental. He added that the scope of review by MSAB would be very limited because market rentals were determined by objective yardsticks and formulas. Mr LI Wah-ming said that there was a review mechanism under the PMCs for disputes on market stall rental, and he considered that similar mechanism should be provided under the new structure to safeguard the interest of the market stallholders. Mr Ambrose CHEUNG expressed support for Mr LI's proposal. Mr Ronald ARCULLI also requested the Administration to consider providing a redress channel on market stall rentals.

19. PAS(CA) responded that the PMCs adopted different policies in the adjustment of stall rental. He pointed out that the Provisional Urban Council (PUC) did not have a review committee for stall rentals. Stallholders who were dissatisfied with the open market rent (OMR) assessment could give their reasons in writing, and the objection would be referred to the Rating and Valuation Department (R&VD) for re-consideration. Mr Ambrose CHEUNG said that although PUC did not have a review mechanism, a market stallholder who disagreed with the new rental could still appeal to the PUC or its

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subcommittee. PAS(CA) reiterated that the Administration did not consider it appropriate for MSAB to hear appeals on market stall rentals because its members did not have expert knowledge on rental assessment. As revision in market stall rentals was based on the OMR assessed by R&VD, the Administration was of the view that R&VD was best placed to consider an appeal.

20. DS(CA) stressed that market stall rentals should be determined on the basis of objective criteria such as the OMR of R&VD. She pointed out that there was very limited scope for an appeals mechanism to vary an objective rental assessment. Moreover, there were already many redress and complaints channels such as the DCs, the Complaints Division of the LegCo and the Office of the Commissioner of Administrative Complaints. The Chairman advised that members' major concern was that government officials would normally follow closely the OMR assessed by R&VD and would not exercise discretion in determining market stall rentals. Members were therefore of the view that there should be an independent mechanism to advise the future Director of Food and Environmental Hygiene on the determination of market stall rentals. Mr Ronald ARCULLI shared a similar view. The Administration noted these comments.

Municipal Services Appeals Board

21. In response to Mr LI Wah-ming, DS(CA) said that the Administration had consulted MSAB and the Director of Administration on the suggestion of appointing DC Chairmen or Vice-chairmen as ex-officio members of MSAB and that either of them should attend the hearing of appeal cases. However, the Director of Administration had expressed concern about the operational difficulties if no ex officio member was available for attending the hearing. She said that it would be more practicable to adopt a flexible approach by appointing more DC members as members of the MSAB and to advise the Chairman of the MSAB to nominate at least one DC member to hear an appeal.

22. Mr LI Wah-ming suggested that the Administration should consider appointing all DC Chairmen and Vice-chairmen as members of the MSAB and to advise the Chairman of MSAB to nominate either of them to hear an appeal. Dr TANG Siu-tong expressed concern that DC Chairmen or Vice-chairmen normally had very busy work schedule, and there would be difficulties to nominate them to attend hearings. Mr LI suggested a roster system to overcome the problem. Mr Ambrose CHEUNG indicated support of Mr LI's suggestion. The Chairman further suggested that DC Chairmen or Vice-chairmen could be appointed to MSAB which was the higher tier of the appeal mechanism, while DC members could be appointed to the Liquor Licensing Board or the lower tier of the appeals mechanism. He said that the arrangement could also help enhance the role of DC members in District affairs. DS(CA) undertook to consider these suggestions in consultation with the Director of Administration and would revert

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to the Bills Committee as soon as possible.

II. Any other business

23. Members noted that the Administration had provided its written response to members' concerns raised at the meeting on 26 October 1999 including a response to the joint letter from the Chairmen of the PMCs. The paper was tabled at the meeting and subsequently issued vide Paper No. CB(2)376/99-00(01).

24. Members noted that the Bills Committee had submitted a written report for the House Committee meeting in the afternoon and would further report to the House Committee on 19 November 1999 to cover other deliberations especially those on members' draft CSAs.

25. The meeting ended at 10:50 am.

Legislative Council Secretariat

26 June 2000