

立法會
Legislative Council

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by the Administration)

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

**Minutes of Meeting
held on Tuesday, 19 October 1999 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon HO Sai-chu, SBS, JP
Hon LEE Wing-tat
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 Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon FUNG Chi-kin

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

Mr John LEUNG
Principal Assistant Secretary for Constitutional Affairs
Mr K T LAI

Assistant Director of Regional Services
(Environmental Health Policy)

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

Mr Sunny CHAN
Senior 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 Connie FUNG
Assistant Legal Adviser 3

Miss Flora TAI
Senior Assistant Secretary (2) 2

I. Matters arising

[Paper Nos. CB(2)67/99-00(01), CB(2)96/99-00(02) to (03),
CB(2)109/99-00(01) and CB(2)118/99-00(01)]

Members agreed to defer discussion of the Administration's responses to members' concerns raised at previous meetings to a future meeting.

II. Clause-by-clause examination

(Paragraphs 315-368 of Schedule 3)

[Paper No. CB(2)96/99-00(04)]

2. The Bills Committee proceeded with the clause-by-clause examination of paragraphs 315-368 of Schedule 3. At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DS(CA)) briefed members on the comparison between the proposed Hawker Regulation and Hawker (Regional Council) By-laws [Paper No. CB(2)96/99-00(04)]. Members noted that the proposed Hawker Regulation was based on the Hawker (Urban Council) By-laws. The gist of discussion is summarised in the following paragraphs.

Paragraph 315

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3. Members did not raise any queries.

Paragraph 316

4. Mr LI Wah-ming was of the view that the Chinese translation of "hawker badge" should be "小販証" instead of "小販徽章" as proposed in the Bill. The Chairman and Mr Ronald ARCULLI shared the view. DS(CA) undertook to consider amending the Chinese translation accordingly.

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Paragraph 317

5. DS(CA) informed members that the proposed section 3(2) was considered obsolete after consultation with the Transport Department which confirmed that no cleaner permit had been issued under the Road Traffic (Parking) Regulations in recent years. The Administration would consider moving a Committee stage amendment (CSA) to delete the provision. DS(CA) further said that the Administration proposed to add a section 3(3) based on the Hawker (Regional Council) By-laws so that the new Regulation would not catch hawking activities on enclosed land held on lease or permit from the Government.

Paragraph 318

6. Members noted that the Provisional Regional Council (ProRC) had not designated any hawker permitted places and that the provision would not affect existing licensed hawkers in the ProRC area.

Paragraph 319

7. Members noted that the proposed section 5(2A) was based on an existing provision in the Hawker (Regional Council) Regulation in order to allow hawking activities in farmer hawker sites in the ProRC area. DS(CA) explained that it was a long-established practice for farmers to sell their surplus farm produce in the three designated areas. No new sites would be designated.

8. Mr LI Wah-ming asked whether there was a need to retain in the new Regulation the existing section 4(2)(b) of the Hawker (Regional Council) By-laws which allowed a hawker to continue hawking for a period of two months after the expiration of his licence. Assistant Director of Regional Services (Environmental Health Policy) (AD/RS(EHP)) responded that the grace period was considered unnecessary given that public transport was convenient and that renewal of hawker licence was much faster nowadays.

Paragraph 320

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9. Members noted that the Administration proposed to add section 5A which was based on an existing provision in the Hawker (Regional Council) Regulation. The purpose was to reflect the current restriction on hawking in certain ProRC areas, such as busy streets and sensitive areas around ProRC markets, to minimise obstruction to pedestrians.

Paragraph 321

10. Members raised no queries on the paragraph.

Paragraph 322

11. Mr LI Wah-ming asked about the reasons for not including in the Regulation section 7(5) of the Hawker (Regional Council) By-laws which allowed a licensee (other than an itinerant hawker licensee) to transfer his place of business from one District to another with the consent of the Authority. AD/RS(EHP) replied that the provision was to cater for licensees of fixed pitches but no such licence had been issued since 1973. At present, there was only a very small number of licenced fixed pitch stalls in the streets in the ProRC area. He pointed out that section 27 of the UC By-laws had already empowered the Authority to designate places of business for fixed pitch licensee, if necessary.

12. In response to Mr LI Wah-ming, AD/RS(EHP) said that the scope of fixed-pitch hawker licence would cover those wall stalls selling newspapers. The Authority might specify under section 8 of the Regulation the areas in which a licensee could hawk if he had not been allocated a fixed pitch. On the Chairman's query about the difference between a fixed pitch stall and a wall stall, AD/RS(EHP) explained that a wall stall was one which was affixed to or placed against any external part of a structure. The ProRC had stopped issuing hawker licences including wall stall licences for many years. ProRC had not issued newspapers hawkers licence for many years because of the change of demand and considerations such as obstruction to pedestrians.

Paragraph 323

13. Mr LI Wah-ming pointed out that while Provisional Urban Council (PUC) had adopted the Itinerant Hawkers Licence Compulsory Deletion Policy without setting an implementation date, ProRC did not have a similar policy. Mr LI therefore asked about Government's position on the matter. DS(CA) reiterated that Government had noted the different policies of the two PMCs and had discussed with the Urban Services Department and Regional Services Department. As the subject was complicated and would require careful study, the Government had not taken any view on the matter at the present stage. Mr Ambrose CHEUNG expressed concern that Government might implement the

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compulsory deletion policy in both PUC and ProRC areas. He therefore urged the Government to give an undertaking to preserve the existing policies for at least two years. DS(CA) assured members that Government did not intend to implement compulsory deletion of itinerant hawkers for the time being. The Administration would consult the relevant LegCo Panel should there be policy changes.

14. Miss CHOY So-yuk suggested that Government should consider preserving certain types of hawker/stall/pitch licences for selling traditional handicrafts and Chinese sweets as a means to promote tourism. AD/RS(EHP) responded that it might be more appropriate to designate specified areas as a bazaar for these activities.

15. In response to Mr LI Wah-ming's concern about the problem of hawking by means of mobile vans, AD/RS(EHP) said that although provisions to regulate such activities were added to the Hawker (Regional Council) By-laws previously, no such licence had ever been issued. He confirmed that these activities were illegal hawking at present and all the goods including the mobile vans could be confiscated. Mr LI pointed out that there would be enforcement difficulties if the actual hawking was not carried out on the mobile van and if the van was only used for storage. AD/RS(EHP) responded that it was a matter of evidence as to whether hawking actually took place on the van. In response to Mr LI, AD/RS(EHP) said that those acquisition activities of second-hand TV and electrical goods on mobile vans might be regarded as illegal hawking of services. Prosecution would be taken by the Police based on legal advice.

16. Mr Ambrose CHEUNG inquired whether there were adequate provisions in the proposed Regulation to regulate the selling of frozen confectionery by means of mobile vans. AD/RS(EHP) replied that there were adequate provisions in the proposed Regulation which was based on the Hawker (Urban Council) By-laws.

Paragraph 324-326

17. Members did not raise any queries.

Paragraph 327

18. Members noted that the Administration proposed to add section 12(1A) which allowed a hawker to employ a person whose name was endorsed on his licence to be his assistant, and that similar provision was found in the existing Hawker (Regional Council) By-laws. Miss CHOY So-yuk queried why it was necessary to require a licensee to have the name of his assistant endorsed on his licence. AD/RS(EHP) replied that any change of name would require endorsement in order to prevent a hawker from selling his business to another.

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19. Members further noted that the licensee would be prosecuted if such assistant engaged in hawking during the absence (reasonable cause excepted) of the licensee from his pitch. Mr LI Wah-ming said that he had received complaints from licensees that they had been prosecuted even though their absence was only temporary. AD/RS(EHP) responded that officers of the municipal services departments would ascertain the cause of absence of the licensee. No prosecution would be taken if the licensee was absent temporarily for reasonable cause. However, frequent absences of the licensee would be dealt with administratively.

20. Mr Ambrose CHEUNG inquired about the succession policy for itinerant hawker licences. He was of the view that an assistant who had been assisting the licensee for many years should have the right to inherit the licence on retirement or the death of the licensee. DS(CA) responded that the Administration had no intention to change existing policies. In reply to the Chairman, AD/RS(EHP) said that a hawker licence would only be issued to one person but the surviving spouse could inherit the licence when the licensee passed away. He confirmed that an assistant could not inherit the licence from the licensee because it was existing policy to reduce the number of licensed hawkers through natural wastage. Mr Ambrose CHEUNG considered that such policy was not applicable to licensees in hawker permitted area and markets. He held the view that a long-serving assistant should have priority in applying for a hawker licence when the licensee he served had passed away. DS(CA) responded that this would be a policy matter for the new department to consider.

Paragraph 328

21. Members noted that the Administration proposed to adopt the ProRC version in section 13 because the version was more comprehensive and provided better control over the transfer of licence.

Paragraph 329

22. Members noted that the Administration proposed to adopt the more comprehensive ProRC version with slight modification under section 14 of the proposed Regulations. As regards section 14(2) and (3), DS(CA) said that the Administration would improve the drafting in respect of "defacement authorised by the Director", in line with Mr LI Wah-ming's previous suggestion for a similar provision.

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23. In response to Mr LI Wah-ming, Senior Assistant Legal Adviser (SALA) explained that section 14(3) was to cater for exceptional circumstances where a licence or hawker badge had been damaged or defaced accidentally. However, it was unclear under section 14 as to whether the damaged or defaced licence

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would need replacement. Senior Assistant Law Draftsman (SALD) informed members that the proposed section 14(3) was based on the existing provision of the Hawker (Regional Council) By-laws, which meant to put beyond doubt that it was not an offence for a hawker to damage or deface a licence or hawker badge by accident. At the request of Miss CHOY So-yuk, DS(CA) agreed to consider improving the drafting for greater clarity.

Paragraph 330

24. Members noted that section 15 required a licensee to carry his hawker licence at all times while hawking, which no similar provision existed in the Hawker (Regional Council) By-laws. DS(CA) explained that hawkers in ProRC area were already required to carry their hawker licence while hawking so that they could produce the licences for inspection on demand. In response to Mr LI Wah-ming, AD/RS(EHP) said that the Administration did not envisage any difficulties for the hawkers to comply with the requirement and a grace period was not necessary.

Paragraphs 331-334

25. Members did not raise any queries.

Paragraph 335

26. Mr LI Wah-ming inquired the reasons for not including in the new Regulation section 21 of the Hawker (Regional Council) By-laws which required every hawker to remove from his place of trade all wares, utensils, showboards and other equipment at night. AD/RS(EHP) responded that the Regulation, which was based on the Hawker (Urban Council) By-laws, could adequately deal with removal of fixture, equipment, goods and paraphernalia left on the pitch when it had to be vacated permanently or temporarily.

27. Mr LI Wah-ming was of the view that section 21 in the ProRC version would have deterrent effect because the Authority could then recover removal expense from the hawker who did not comply with the provision. DS(CA) reminded members that while there was only one fixed-pitch stall in the streets in ProRC area, there would be enforcement difficulties if the provision was to apply to hawkers in the existing Urban Council (UC) area.

28. Mr LI Wah-ming insisted that section 28 of the Hawker (Regional Council) By-laws and section 34 of the Hawker (Urban Council) By-laws imposed slightly different requirements. In response to the Chairman's enquiry about the legal effect of these two sections, SALA explained that the ProRC version had a narrower scope of application. While the ProRC version required removal of equipment until the scavenging or street cleaning was completed, no

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timeframe was specified in the UC version. The Chairman remarked that section 34 had thus conferred very broad power on the Urban Council in respect of vacation of pitches. Mr Ambrose CHEUNG said that such power was necessary to make way for public works. Mr LI Wah-ming remained concerned that "vacation" in the UC version might not have the same meaning as "removal of equipment" in the RC version.

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29. In view of members' concerns, AD/RS(EHP) said that the Administration would review whether section 31 (Control of use of fixed pitches) or section 34 of the Regulation were adequate for enforcing the requirement to remove fixture, equipment, goods and paraphernalia on the pitch if temporary or permanent vacation was necessary.

Paragraph 336-337

30. Members did not raise any queries.

Paragraph 338

31. Mr LI Wah-ming asked about the reasons for not including section 22 of the Hawker (Regional Council) By-laws which required every licensee to display his pitch card in a conspicuous manner at his place of trade. AD/RS(EHP) replied that a licensed hawker was already required to wear his hawker badge (which also showed the pitch number) while hawking.

Paragraphs 339-350

32. Members did not raise any queries.

Paragraph 340-352

33. DS(CA) informed members that the Hawker (Regional Council) By-laws did not contain detailed provisions regulating fixed-pitch stalls because there was only a very small number of fixed-pitch stalls in the streets in ProRC area. The existing licensed hawkers in the ProRC area would not be adversely affected by the proposed Regulation.

III. Any other business

34. The Chairman said that the Bills Committee would meet deputations at its next meeting on Friday, 22 October 1999 from 8:30 am to 12:45 pm. So far, eight deputations had indicated interest to present their views at the meeting.

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35. The Chairman informed members that Secretary for Home Affairs and Mrs Lily YAM, Head of the Task Force on Reorganisation of Municipal Services would brief the Bills Committee on the new structure for the delivery of municipal services at the meeting on 26 October 1999.

36. The meeting ended at 4:05 pm.

Legislative Council Secretariat

12 May 2000