

立法會
Legislative Council

LC Paper No. CB(2)2329/98-99
(These minutes have been seen
by the Administration)

Ref : CB2/BC/23/98

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

**Minutes of Meeting
held on Wednesday, 29 September 1999 at 2:30 pm
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 Cyd HO Sau-lan
Hon LEE Wing-tat
Hon Fred LI Wah-ming, JP
Hon Ronald ARCULLI, JP
Hon James TO Kun-sun
Hon Ambrose CHEUNG Wing-sum, JP
Hon CHAN Wing-chan
Hon Howard YOUNG, JP

Members Absent : Hon CHAN Kam-lam
Hon Jasper TSANG Yok-sing, JP
Hon YEUNG Yiu-chung
Hon CHOY So-yuk
Hon FUNG Chi-kin
Dr Hon TANG Siu-tong, JP

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

Mr John LEUNG
Principal Assistant Secretary for Constitutional Affairs

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Mr K T LAI
Assistant Director of Regional Services
(Environmental Health Policy)

Mr Sunny CHAN
Senior Government Counsel, 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. Matters arising

Sixth Schedule in Schedule 3- Authorities to initiate proceedings for offences under section 131(1) of the Public Health and Municipal Services Ordinance (Cap. 132) [LC Paper No. CB(2)2886/98-99]

At the invitation of the Chairman, Deputy Secretary for Constitutional Affairs (DS(CA)) took members through the comparison table on the existing and proposed authorities to initiate proceedings for offences under section 131(1) of the Ordinance.

2. Mr LEE Wing-tat asked about the reason for including Director of Health as a designated authority to initiate proceedings under section 27 for failure to take steps to remove or to prevent the accumulation of water or the existence of larvae or pupae of mosquitoes. DS(CA) responded that proceedings under this section were normally taken by the Provisional Municipal Councils (PMCs) or the Director of Food and Environmental Hygiene in future. The inclusion of the Director of Health as a designated authority was only to cater for urgent circumstances where failure to comply with the requirements might lead to transmission of infectious diseases. Mr HO Sai-chu agreed that such a

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mechanism was necessary to enable prompt action by the Department of Health in case of health hazard caused by mosquitoes.

3. Mr James TO inquired the criteria for prosecution under section 34 concerning sanitary conveniences used in common by occupiers of premises. Assistant Director of Regional Services (Environmental Health Policy) (AD/RS(EHP)) said that he did not recall that the provision had been invoked in the past. He explained that the provision only applied to sanitary convenience for common use by occupiers of two or more premises, while the cleansing of public conveniences was the responsibility of the Urban Services Department (USD) and Regional Services Department (RSD). Mr TO considered the provision out-dated and requested the Administration to review the need for retaining section 34. DS(CA) noted Mr TO's concern and said that the new authority would review Cap. 132 after the new structure was put in place.

4. With reference to the new authorities to initiate proceedings for offence under section 50, Mr LEE Wing-tat sought confirmation as to whether there was a clear delineation of responsibilities for drug and food matters. DS(CA) responded that the Director of Food and Environmental Hygiene and the Director of Health were the respective designated authorities in respect of food and drugs under relevant provisions of the Ordinance, and that "food" and "drug" had already been defined in section 2 (Interpretation). DS(CA) added that the Administration had provided an information paper on the division of responsibilities for food and drug under the new structure. Mr LEE Wing-tat said that he was concerned about the grey areas in food and drug matters, such as health food, and the practical difficulties in enforcement. The Chairman also pointed out that proprietary Chinese medicine was prevalent in the market without proper regulation. As members had expressed concern about the grey areas in food and drug matters, the Chairman requested the Administration to take urgent action to review the regulation and the authorities in order to plug existing loopholes. Mr LEE Wing-tat suggested that the Administration should give an undertaking of an urgent review at the resumption of the Second Reading debate of the Bill. DS(CA) noted members' views.

5. Members noted some omissions in the Sixth Schedule, for example, sections 92C and 105E, and that the Administration would propose Committee stage amendments (CSAs) accordingly.

6. With regard to section 105S, Mr LEE Wing-tat queried why the prior consent of the Chief Secretary for Administration was required for using any part of a civic centre for the purpose of public meeting. DS(CA) explained that normally approval was granted by the Director under section 105Q for the use of civic centres, while section 105S was an additional provision for granting approval for the use of civic centre for public meeting. Mr LEE was of the view that the provision was unnecessary and should be deleted. DS(CA) undertook to

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provide information on the rationale of section 105S and to review the drafting to avoid ambiguity.

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7. Members noted that the Director of Lands was the designated authority under section 111C for assigning or changing street names. Mr James TO said that there had been criticisms that street names in Hong Kong lacked imagination. He therefore asked about the future arrangements for naming of streets. DS(CA) responded that the Administration did not propose any change to the existing procedures, and that a street would be named after consultation with different interested parties, including the relevant District Councils. She added that there was an appeal mechanism for objections against the decision of the authority. In response to Mr James TO, DS(CA) undertook to provide more information on the mechanism, criteria and public consultation arrangements for the naming of new streets and alteration of existing street names.

8. Mr James TO asked whether the naming of new streets could be done by way of subsidiary legislation subject to the negative vetting of the Legislative Council (LegCo). He said that the negative vetting procedure could enable the LegCo to amend the name of new streets by way of resolution if necessary. DS(CA) said that the Director of Lands was now only required to make declaration of the street name in gazette, and that the Administration had not considered Mr TO's proposal.

9. Mr LEE Wing-tat expressed support for Mr TO's suggestion. However, Mr HO Sai-chu, Mr CHAN Wing-chan and Mr TING Woo-shou objected to Mr TO's proposal and they preferred the Director of Lands to the LegCo as the authority to decide on naming of streets, provided that there was proper consultation with the District Councils. Mr TO said that while he supported the existing practice of consultation, he maintained the view that naming of streets was an important power which should be vested with the LegCo following the dissolution of the PMCs.

Municipal Services Appeals Board
[LC Paper No. CB(2)2887/98-99]

10. DS(CA) briefed members on the Administration's paper [LC Paper No. CB(2)2887/98-99] which set out the significant changes to the Municipal Services Appeals Board (MSABs) as provided in Schedule 4 of the Bill. Members noted that secretarial service to the proposed MSAB would continue to be provided by the office of the Director of Administration.

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Jurisdiction of the appeal mechanism

11. Members noted that the proposed MSAB would deal with appeals against decisions of the Liquor Licensing Board and the Licensing Appeals Board (LAB). Mr LI Wah-ming expressed strong reservation that the proposed MSAB's jurisdiction would not cover appeals in respect of termination of market stall tenancy and market rental review as these were outside the scope of the LAB. Mr LI said that these appeals were currently dealt with by the Review Committees of the two PMCs, and he was of the view that there should be an equivalent mechanism to deal with such appeals if the two PMCs were abolished. Mr Ambrose CHEUNG expressed similar concerns.

12. AD/RS(EHP) responded that the USD and RSD were now examining whether a licence instead of a tenancy agreement would be more appropriate for the operation of a market stall. If this was to be implemented, the LAB would be able to deal with appeals on market stall licences.

13. Mr LI Wah-ming and Mr Ambrose CHEUNG expressed doubts about the feasibility of converting all market stall tenancies to licences. As the review would take time to complete, Mr LI suggested that the Administration should consider expanding the LAB's role to cover appeals against termination of market stall tenancy and market rental review. Mr CHEUNG also urged the Administration to undertake that the existing policy would remain unchanged for three years, and that the Administration would consult the trade on any changes in policy. Mr LEE Wing-tat stressed that the Administration must consider carefully the implications of any policy changes in respect of market stall tenancy, particularly issues concerning market stall rentals in view of the present economic situation. DS(CA) thanked members for their suggestions and agreed to provide a written response after careful consideration.

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Composition of the MSAB

14. Members noted that there would be no change in the composition of the MSAB except that the attendance of a PMC member would cease in future. Mr CHAN Wing-chan asked whether the Administration would consider inclusion of District Council (DC) member or LegCo Member in place of the PMC member. DS(CA) responded that the Administration had all along appointed representatives from different sectors of the community to the panel of MSAB and did not consider it necessary to specify the types of representatives in legislation. She explained that the PMC member on the MSAB was to advise on the relevant policies of the PMCs, and that it might not be appropriate for the authority who made the original decision to sit on the MSAB. The Chairman suggested the Administration to consider including in the MSAB panel a member or the chairman of the concerned DC to provide a district opinion on the appeal case. DS(CA) agreed to consider the views expressed.

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II. Clause-by-clause examination (from Schedule 4 onwards)

15. The Bills Committee then continued clause-by-clause examination from Schedule 4 onwards. At the Chairman's invitation, Principal Assistant Secretary for Constitutional Affairs (PAS(CA)) explained the various amendments in Schedule 4. PAS(CA) said that the Administration proposed that government departments as licensing authority could also appeal to the MSAB against the LAB's decisions. He also assured members that it was Government policy that there would be no overlapping of membership between the two tiers of appeals mechanism. PAS(CA) added that the Vice-Chairman of the MSAB should also be a legally qualified person, and a CSA would be moved to that effect. Responding to the Chairman, PAS(CA) confirmed that it was the existing requirement for a legally qualified person to be the Vice-Chairman of the Board but that this was inadvertently omitted from the Bill.

Paragraphs 1-2

16. Members did not raise any queries.

Paragraph 3

17. Members noted that the proposed section 5 sought to exclude a person who, or a member of a body which, was involved in making the relevant administrative decision or the appeal board decision or a decision confirmed, varied, suspended or cancelled by the appeal board decision. Mr LEE Wing-tat asked about the rationale for distinguishing "administrative decision" and "appeal board decision" in the interpretation. Senior Assistant Legal Adviser advised that the two types of decision would need to be defined because the function of MSAB under new section 3(2) was to hear and determine any appeal to the Board from an "appeal board decision" or an "administrative decision". He said that an "administrative decision" would exclude a decision made by an appeals board. Senior Government Counsel (SGC) added that the meaning of "administrative decision" was equivalent to that of "decision", and that the new definition of "appeal board decision" was added because the MSAB would deal with LAB's decisions as well. In response to Mr LEE Wing-tat, SGC confirmed that "decision" had a broad meaning in law, and that it could refer to an act or an omission which was a decision for not to act. The Chairman remarked that the broad scope of "decision" offered better protection for the general public who could then appeal against an omission or inaction of the Government.

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II. Any other business

18. The Chairman reminded members that the next two meetings would be held on Tuesday, 5 October 1999 at 2:30 pm. and on Friday, 8 October 1999 at 10:45 am. At the Chairman's suggestion, members agreed that the meetings scheduled for 22 and 29 October 1999 would be double time-slots.

19. The meeting ended at 4:35 pm.

Legislative Council Secretariat

15 May 2000