

政制事務局政府總部的信頭

**Letterhead of CONSTITUTIONAL AFFAIRS BUREAU GOVERNMENT
SECRETARIAT**

Our Ref: CAB C4/17/7

4 November 1999

Mrs Constance LI
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central

Dear Mrs Li,

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

Concerns raised at meeting of 29 October 1999

Thank you for your letters of 29 October conveying the Bills Committee's concerns raised at the above meeting. Our response to these concerns, following your same order, is set out below:

1. Regulation relating to markets

New Clause 26A - To consider providing an appeals mechanism for disputes over market stall rentals

An appeals mechanism for market stall rentals is established for the Provisional Regional Council only, under its Market Stall Rental Review Sub-committee. The Provisional Urban Council does not have an appeals mechanism for market stall rentals. Under the current policy of the Provisional Urban Council (PUC), any market stallholder who disagrees with the new open market rent (OMR) assessed by the Rating and Valuation Department (RVD) upon renewal of stall agreement may put forth his reasons and request for a review of the OMR assessment. RVD will take into account the submission of the stallholder in reassessing the OMR of the stall. Although the ProRC has set up a Market Stall Rental

Review Sub-committee to hear appeals on stall rentals, only 3 cases has been handled since May 1997 and RVD's assessment was upheld in two cases.

As explained in our letter dated 14 October we believe that using the RVD assessment is the most objective yardstick for determining OMR. It would not be appropriate for the Municipal Services Appeals Board comprising generalists to hear appeals on stall rentals. We also have reservation about the proposal of relying on the assessment of private estate surveyors who may not have as much information on open market rents as the RVD. Given that the PUC's mechanism of review by RVD has worked reasonably well, there is little justification to set up a separate appeals mechanism for disputes over market stall rentals. In any case, the new Department will need to undertake a review of the inconsistent policies and practices of the two municipal areas after 1.1.2000. Policies on public markets will be a subject of review.

2. Prescription of fees and charges (Clause 63)

To consider whether market stall rentals can be included in the proposed section 124I so that the fees levels will be subject to LegCo vetting

Market stall rentals are commercial revenue that are determined by open or restricted auction or set with reference to OMR. It is not possible nor appropriate to consider them as fees and charges subject to vetting by LegCo.

3. Advertisement Regulation (Clause 148)

To further consult relevant bureaux/departments on the implication of the proposed deletion of section 5 which deals with the control of occulting signs

We have further consulted the Transport Bureau and Transport Department. Since our last response to LegCo's questions on 16 September 1999 in relation to "occulting signs", the Transport Department has conducted a review of the accident situation at locations where occulting or animated signs have been erected. The conclusion is that no correlation can be drawn between the number of traffic accidents and the existence of occulting signs. Moreover, there are already legal provisions for controlling the erection of occulting signs for other purposes. These include:

- (a) the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) and the Airport Navigation (Hong Kong) Order 1995 for air traffic safety;
- (b) the Shipping and Port Control Ordinance (Cap. 313) for marine traffic safety; and
- (c) the Road Traffic Ordinance (Cap. 374) for signing (occluding or otherwise) within the expressways for road traffic safety.

In addition, the proposed reinstatement of section 11 of the Advertisement Regulation through a CSA will provide the power for Transport Department to stop any person from erecting in any premises any sign which interferes with road traffic. If any sign (occluding or otherwise) erected causes interference to road traffic, the sign can be ordered to be removed under sections 11 and 14(2) of the Regulation, and any person who fails to comply with such an order shall be liable to a daily fine and to imprisonment for 3 months.

It is relevant to note that a sign (occluding or otherwise) which falls within the definition of building works under the Building Ordinance (Cap. 123) would require prior approval of the Building Authority. Upon circulation of the proposal by the Building Department for comments, the Transport Department will have the opportunity to assess the impact of the sign to road traffic and if there is the risk of interference with road traffic, the Transport Department can recommend that approval be refused. In this connection, the proposed registration scheme for advertisement signboards, which requires major signboards to be registered within a period from erection, would further help Government enhance the necessary control.

In the light of the availability of the above measures, we do not feel that there is a need to retain section 5 which totally prohibits the erection of occluding signs.

4. Food Business Regulation (Clause 249)

- (a) *To make corresponding amendments to section 30(3) by re-inserting “accidentally defaced in line with the CSA to clause 250*

We will introduce a CSA to section 30(3) accordingly.

- (b) *To consider whether a grace period should be allowed for compliance with section 13(2)(a) of the RC Bylaws requiring the open space to be surfaced and drained, as the requirement is currently not stipulated in the UC Bylaws*

Section 13(2)(a) of the RC Bylaws generally applies to those food factories in the New Territories which have to carry out the manufacture and preparation of food in the open air which could not reasonably be carried on elsewhere having regard to the circumstances. Since none of the existing licensed food premises in the urban area use such open space for the preparation of food, it is not necessary to provide for a grace period.

- (c) *To consider the implications of applying the more stringent standards for cleanliness and repair of food premises in section 5 of the RC Bylaws.*

There is no difference between the UC and RC Bylaws in relation to the requirements on cleanliness and repair of food premises. Members were concerned that there was no equivalent in the UC Bylaws to section 5(5) of the RC Bylaws which makes a proprietor who fails to comply with the requirements of a notice issued by a health officer or inspector under section 5(4) guilty of an offence. In fact, section 36(1)(b) of the UC Bylaws is to the same effect. The adoption of section 5 of the RC Bylaws in the Regulation will not adversely affect holders of food premises licences in the urban areas.

5. Places of Amusement Regulation (Clause 475)

To provide the CSAs to clause 475 concerning the age restriction which can constitute refusal and revocation of licence under section 7 of the Regulation

We will make a CSA to clause 475 to lower the age restriction from “21” to “18”.

6. Change of Department name

To consider amending the name of “Food and Environmental Hygiene Department” to “Food and Environmental Health Department”

We will address this issue separately.

7. Markets Regulation

- (a) *To consider whether the restriction of employment of discharged prisoners under section 13 should be relaxed*
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We have no objection to repealing section 13 and will introduce a CSA accordingly.

- (b) *To consider whether market stall tenants in UC areas should be required to provide refuse bins*
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There is a need to require all market stall tenants to provide refuse bins at market stalls for hygiene reasons. Under the tenancy agreements of Provisional Urban Council market stalls, all stallholders are already required to provide at all time at the stall a dustbin of a pattern and capacity and in such condition as is approved by the Council. Stallholder should not have any difficulty in complying with the requirement under section 7A of the proposed Regulation.

8. Public Swimming Pools Regulation

To amend “sparsely clad” to “improperly clad” under section 4(k)

We will introduce a CSA accordingly.

Yours sincerely,

(John C.Y.Leung)
for Secretary for Constitutional Affairs