

立法會
Legislative Council

LC Paper No. CB(2)412/99-00

Ref : CB2/BC/23/98

**Paper for the House Committee meeting
on 19 November 1999**

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

Purpose

This paper reports on the Bills Committee's discussion of the draft Committee stage amendments (CSAs) proposed by three members.

Background

2. The Bills Committee made a report to the House Committee on 12 November 1999 on its deliberations of the Bill and the Administration's CSAs. As the Bills Committee held its last meeting on 12 November 1999 to discuss the third member's proposed CSAs, a further report is made to cover such discussion.

3. Members have noted the draft CSAs proposed by Mr LI Wah-ming, Mr LEE Wing-tat and Mr Ambrose CHEUNG, which were forwarded to the Bills Committee before 12 November 1999. The discussion and the Administration's response to the proposed amendments are summarized below.

Mr LI Wah-ming's proposed amendments

4. Mr LI Wah-ming has proposed a number of amendments to the Public Health and Municipal Services Ordinance (Cap.132) and four proposed Regulations in Schedule 3 of the Bill, and to the Municipal Services Appeals Boards Ordinance, Cap. 220 (Schedule 4 of the Bill). The proposed CSAs are in **Appendix I**.

5. The Administration has agreed to the amendments relating to the proposed Food Business Regulation (section 256) and Offensive Trades Regulation (section 462) in Schedule 3 of the Bill. The amendment to Food Business Regulation seeks to specify that "material" deviation, instead of "any" deviation, to the approved plan of a

licensed food business establishment will be an offence. As regards the amendment to Offensive Trades Regulation, the purpose is to provide a one-year grace period for compliance with a proposed licensing condition.

6. The Administration has expressed reservations, however, to the other amendments proposed by Mr LI Wah-ming. Members note that the proposed amendment to the Stadia Regulation is to remove the power of a stadium manager or any authorized staff member to direct a person to leave a stadium, if the person has committed or is about to commit an offence under the Summary Offences Ordinance. The Administration has responded that such power is necessary to maintain public order in stadia. With regard to the suggestion of expanding the jurisdictions of the Municipal Services Appeals Board (MSAB) to cover objections to market stall rentals and additions of exhumation facilities in public crematoria, some members have expressed reservation. The Administration considers that the existing appeals channels in respect of market stall rentals are adequate and effective. On the additions of facilities related to the burning of human remains, the Administration has advised that the relevant District Councils will be consulted and the funding will require approval of the Legislative Council Finance Committee.

7. Concerning the proposed addition of two ex-officio seats for District Council (DC) members on MSAB, the Administration prefers administrative arrangement to legislation in order to provide greater flexibility in appointing DC members to MSAB.

Mr LEE Wing-tat's proposed amendments

8. The Bills Committee has discussed Mr LEE Wing-tat's proposed amendments to four proposed Regulations under Cap. 132 (**Appendix II**).

9. The Administration has no objection to the proposed amendment to the Pleasure Grounds Regulation and Public Conveniences (Conduct and Behaviour) Regulation. The former seeks to allow entry of handcarts carried by hand into a pleasure ground, and the latter removes the prohibition on loitering in public conveniences.

10. The Administration does not support the other two amendments relating to Museum Regulation (Section 446) and Public Cemeteries Regulation (Section 559) in Schedule 3 of the Bill. On the proposal that museums should open on public holidays, the Administration considers that the opening time of museums can be determined administratively having regard to resources, location of museums and public demand. As regards the proposed repeal of the provision exempting Government from liabilities for losses and damages to articles inside graves in public cemeteries, the Administration has advised that it is difficult to ascertain what articles are placed inside the graves, and the proposed repeal of the exemption clause could lead to unnecessary work in relation to unjustified claims.

Mr Ambrose CHEUNG's proposed amendments

11. At the Bills Committee meeting on 12 November 1999, Mr Ambrose CHEUNG briefed members on his "One Council, One Department" concept (**Appendix III**) as an alternative to the framework proposed by the Administration. He suggests 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 relating to environmental hygiene, culture and leisure. The proposed Council will comprise 80 elected members, 59 of them will be returned by universal suffrage, 18 to be elected from each District Council and 3 being representatives of Heung Yee Kuk. The Municipal Council will be assisted by a municipal services department in the delivery of such services. Members have noted that the proposed Council will remain as a body corporate and that the Council and Department will be funded through a one-line vote to be approved by the Legislative Council.

12. Some members have sought clarification on a number of points in relation to Mr CHEUNG's proposal. A member has commented that the proposed structure does not address the control of drugs, and that there are no concrete provisions for the election of Council members. In this connection, the Chairman has pointed out that all Provisional Municipal Council members are now appointed by the Chief Executive, and that no legislation exists for the election of Municipal Council members. Mr CHEUNG will therefore have to draw up detailed provisions in this respect. Senior Assistant Legal Adviser has also advised that Mr CHEUNG's proposed CSAs will require technical improvements before they can achieve the intended legal effect.

13. The Administration has reiterated its objection to Mr CHEUNG's proposal, emphasizing that the proposed CSAs are inadequate and incapable of functioning without substantial amendments to the many existing provisions and clauses in the Bill. The Administration considers that Mr CHEUNG's proposal cannot address the existing problem of fragmentation of responsibilities for food safety and environmental hygiene between Government and the Municipal Councils. There will also be overlapping responsibilities in the areas of arts and culture among the proposed Council, Home Affairs Bureau and other statutory bodies. The Administration has stressed that the "One Council, One Department" concept has serious implementation problems and is incompatible with the provisions in the Bill.

14. Mr CHEUNG explains that his CSAs, which are presently only available in English, are tentative. He therefore welcomes views from members on refinement to his CSAs. For example, he may consider including the Department of Health in his proposal if necessary. With regard to the election arrangements, he considers that the future election of Municipal Council members can model on the District Council election, and he envisages no difficulties in drawing up the detailed provisions in this respect. He has requested members to consider whether his proposal is feasible in principle while the technical issues can be resolved at a later stage.

15. The Bills Committee has noted the features of Mr CHEUNG's proposal without taking a position on its feasibility and desirability. The Bills Committee also notes that Mr CHEUNG may propose other CSAs to the subsidiary legislation in Cap. 132 and the composition of the Liquor Licensing Board. However, as the text of his CSAs was not available on 12 November 1999, members have not been able to discuss them.

Administration's response

16. The Administration has provided a written response to the draft CSAs of the three members in **Appendix IV**.

Advice sought

17. Members are invited to note the gist of discussion of three members' proposed CSAs as above.

Legislative Council Secretariat
17 November 1999

李華明建議的修正案解釋

規例	條次	修訂建議	註釋
食物業規例	34(a) [見草案附表 3 第 256 條]	建議較寬鬆的發牌條件，在第 34 條在圖則上，而“不合理”字眼替“偏差”	由於政府表示規例第 34 D 已說明偏差範圍，所以不採用“重大偏差”的字眼。但為了保障業界，避免日後衛生幫辦無理阻撓，所以，提出了如果圖則有不合理的改動，才算是觸犯此規例。
厭惡性行業規例	10(1) [見草案附表 3 第 462 條]	加入寬限期	由於政府估計市區從事厭惡性行業的人士不難遵守規例中第 10(m)條的發牌規定，但政府並未解釋何以會有這項樂觀的估計（例如現時是否只有很少市區的厭惡性行業不符此項規定），所以，為保障業界起見，我們加入 12 個月的寬限期。
體育場規例	7 [見草案附表 3 第 690 條]	刪除了體育場經理及授權人士可依據任何《簡易程序治罪條例》中任何條款而指示人離開體育場的規例。	是項修訂，旨在限制體育場經理擁有過份不合理的權力。
文康市政上訴委員會法例	3 [見草案附表 4 第 5 條]	文康上訴委員會的成員，加入 2 名區議會代表。	由於政府研究過後，表示無須要修訂成員的組合，因此，提出修訂，加入 2 名區議員，一旦這個修訂獲得通過，預計未來當選的全港各區區議員都可以輪流出席是項委員會的聆訊。加入 2 名區議員的原因，是因為以往兩局分別有兩個市政上訴委員會。

Revised Date: 4 Nov 1999

PROVISION OF MUNICIPAL SERVICES (REORGANIZATION) BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable LEE Wah-ming

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 3, section 256	(a) In paragraph (c), by deleting the full stop at the end and substituting “;”; (b) by adding - “ca) in paragraph (a), by adding “unreasonable” before “deviation”.”.
Schedule 3, Section 462	(a) In paragraph (b), by deleting the fullstop at the end and substituting “;”; “(b) by adding – “(c) by adding – “(2a) For the purposes of subsection 1(m), every licensee in urban area may be exempted in the first twelve months after this regulation comes into operation.” .”.
Schedule 3, section 690	By adding before paragraph (a) – “(aa) by repealing subsection (1)(a)(i) ; ” .
Schedule 4, section 5	In the proposed section 3 – (a) by deleting paragraph (b) in subsection (3) and substituting - “(b) 2 members of the District Councils and 2 members of the panel appointed under section 6(1)(c), being members nominated under subsection (4).”; (a) in subsection (4), by deleting “must nominate 2 members for the purposes of subsection (3)(b)” and substituting “shall, for the purposes of subsection (3)(b), nominate the members of that Board”.

李華明建議的修正案解釋

法例/規例	條次	修訂建議	註釋
公眾衛生及市政條例	條例第 124D [見草案附表 3 第 61 條]	加入現有火葬場如興建任何設施，都可以向市政服務上訴委員會提出反對。	現行公眾衛生及市政條例第 124D 條列明了如果設立火葬場是在民居附近的話，市民可因此向市政服務上訴委員會上訴。然而，若現行的火葬場要加建任何設施的話以焚化人類遺骸的話，(例子:鑽石山火葬場加建 6 個火化爐)，市民則無權透過此渠道上訴，因此，乃提出修訂，以保障在這方面可有反對的權利。
公眾街市規例	草案附表 3 第 615 條	加入街市檔戶可就終止其租契、牌照、許可証及租金的調整事宜向市政服務上訴委員會予以上訴，另外，亦加入檔戶可在收到通知後 30 天外，就該決定提出上訴。	由於政府在考慮過後，只允許就租契、牌照及許可証事宜方面在委員會階段作出修訂，加入街市檔戶可就此方面的終止事宜提出上訴，惟未應議員要求，就租金事宜向街市檔戶提供任何上訴渠道，因此，我們就此提出修訂。另外，政府就有關上訴，原本只供檔戶有 14 天的上訴期限，惟參照現行的公眾衛生及市政條例的條文，大多有 30 天的上訴期 (例如: 第 111B 及 C 條有關街道的命名，又或第 124D(4) 有關反對設置火葬場)，在從考慮檔戶的角度下，我們將原本政府在委員會階段所提出的 14 天時限，改為 30 天。

PROVISION OF MUNICIPAL SERVICES (REORGANIZATION) BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Li Wah-ming

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 3, Section 61	<p>By deleting the section and substituting –</p> <p>“61. Provision for hearing objections where application for crematorium in certain locations</p> <p>Section 124D is amended -</p> <ul style="list-style-type: none">(a) in the heading, by adding “or adding facilities in an existing crematorium” after “certain locations”;(b) in subsection (1), by adding “or for adding any facility which is directly related to the burning of human remains in an existing crematorium” after “highway,”;(c) by repealing subsection (4) and substituting “The Authority shall give notice in writing of its decision together with reasons, to the applicant and any objector as soon as practicable after the decision is made.”;(d) by adding – “(5) An applicant or objector may appeal to the Municipal Services Appeal Board against the decision of the Authority within 30 days of the date of the notice.”.
Schedule 3, Section 615	<p>By adding –</p> <p>“6A. Appeals</p> <p>“A person to whom a stall is let under section 6 may appeal to the Municipal Services Appeals Board against any decision of the Director to terminate the lease, license, permit or to adjust the rent, within 30 day of the notice of termination or adjustment.”.</p>

PROVISION OF MUNICIPAL SERVICES (REORGANIZATION) BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Mr Ambrose CHEUNG

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	<p>By deleting the long title and substituting:--</p> <p>“ Provide for the provision of municipal services by the Urban Council and the Government as the case may be; to repeal the Provisional Regional Council Ordinance and to amend the Provisional Urban Council Ordinance; to make incidental and supplemental and connected provisions, including the vesting of property, rights and liabilities of the Provisional Regional Council and the Provisional Urban Council in the Urban Council and the Government as the case may be and the transfer of their functions; to amend the Public Health and Municipal Services Ordinance, the Municipal Services Appeals Boards Ordinance, the Dutiable Commodities Ordinance and the Places of Public Entertainment. Ordinance and to make consequential and related amendments to enactments.”</p>
2	<p>(a) by adding - ““Urban Council” means the Urban Council established by Section 3 of the Urban Council Ordinance (Cap. 101)”</p> <p>(b) by adding - ““food safety matters” means any matter governed by provisions under Part V of the Public Health and Municipal Services Ordinance (Cap. 132)”</p> <p>(c) by adding - ““other municipal services” means such functions and powers of the Urban Council other than food safety matters.”</p>
3	<p>(a) In the heading, by adding “amendment of” after “and”</p>

(b) By deleting clause 3 and substituting -

“ The Provisional Urban Council Ordinance (Cap. 101) and its subsidiary legislation are amended to the extent and in the manner set out in Schedule 1. The Provisional Regional Council Ordinance (Cap. 385) and the subsidiary legislation made under it are repealed.

5(1) By adding the following proviso –

“Provided that any party to the agreement, arrangement or contract other than the Council shall be entitled to terminate the agreement, arrangement or contract within a period of 6 months after the appointed day by giving prior notice in writing to the Government at least 30 days before the date of termination.”

6A the following is added -

“6A. Scope of application of sections 4, 5 and 6

Sections 4(1), 5(1) to 5(7) and 6 shall only apply in relation to food safety matters.”

6B the following is added -

“6B. Vesting of property, rights and liabilities and other savings in relation to other municipal services

In relation to other municipal services, any reference to the Government in Sections 4(1), 5(1) to 5(7) and 6 shall be read as a reference to the Urban Council.”

14 - the following is added -

“14. Amend references to SCHEDULES

- (a) SCHEDULE 1 shall become SCHEDULE 2
- (b) SCHEDULE 2 shall become SCHEDULE 3
- (c) SCHEDULE 3 shall become SCHEDULE 4
- (d) SCHEDULE 4 shall become SCHEDULE 5
- (e) SCHEDULE 5 shall become SCHEDULE 6
- (f) SCHEDULE 6 shall become SCHEDULE 7
- (g) SCHEDULE 7 shall become SCHEDULE 8”

SCHEDULE 4,

- section 63 (a) In the proposed section 124J(1) by deleting “with the approval of the Financial Secretary”.
- (b) In the proposed section 124L by deleting “The Financial Secretary or any public officer under his delegated authority” and substituting it with “The Authority”.

SCHEDULE 4,
section 66

- (a) In section 125 -
- (i) by deleting paragraph (a);
- (ii) by renumbering paragraph (b) as paragraph (a);
- (iii) by deleting paragraph (c) and substituting the following as paragraph (b) -
- “by repealing subsection (10) and substituting -
- (10) If any person is dissatisfied with the determination of the licensing authority upon review under the provisions of subsection (9), he may, within 14 days after notification by the licensing authority of such determination, appeal to the Licensing Appeals Board established under section 125A against the decision.”

SCHEDULE 4 By deleting the THIRD SCHEDULE and substituting -

”THIRD SCHEDULE [s.3]

DESIGNATED AUTHORITIES

Section	Designated Authorities
4	Director of Drainage Services
5	Director of Drainage Services
6	Director of Drainage Services
7	Director of Drainage Services
9	Director of Drainage Services
10	Director of Drainage Services
13	Urban Council
14	Urban Council

15	Urban Council
20	Urban Council
22	Urban Council
22A	Urban Council
23	Urban Council
23A	Urban Council
24	Urban Council
26	Urban Council
27	Urban Council
28	Urban Council
29	Urban Council
30	Urban Council
32	Urban Council
33	Urban Council
34	Urban Council
35	Urban Council
36	Urban Council
37	Urban Council
38	Urban Council
42	Urban Council
42A	Urban Council
42B	Urban Council
43	Director of Urban Services
44	Urban Council
46	Urban Council
47	Urban Council
48	Urban Council
49	Urban Council
51A	Director of Food
56	Director of Food, but in respect of drugs, Director of Health
56A	Director of Health
58	Director of Food, but in respect of drugs, Director of Health
59	Director of Food, but in respect of drugs, Director of Health
62	Director of Food, but in respect of drugs, Director of Health
69	Director of Food, but in respect of drugs, Director of Health
70	Director of Food, but in respect of drugs, Director of Health
75	Director of Food, but in respect of drugs, Director of Health
76A	Director of Food

76B	Director of Food
77	Director of Food
78	Director of Food
79(1),(3) and (5)	Urban Council
79A	Urban Council
80	Urban Council
81	Urban Council
82	Urban Council
83A	Urban Council
83B	Urban Council
84	Urban Council
86	Urban Council
86B	Urban Council
92A	Urban Council
92AA	Urban Council
92AB	Urban Council
92B	Urban Council
93	Urban Council
94	Urban Council
94A	Urban Council
100	Urban Council
101	Urban Council
104(1)	Chief Executive in Council
104(3)	Director of Lands
105	Director of Buildings
105A	Urban Council
105B	Urban Council
105C	Urban Council
105D	Urban Council
105G	Urban Council
105H	Urban Council
105I	Urban Council
105K	Urban Council
105L	Urban Council
105M	Urban Council
105N	Urban Council
105O	Urban Council

105P	Urban Council
105Q	Urban Council
106(1) and (6)	Urban Council
106(3) and (4)	Director of Lands
107	Urban Council
108	Urban Council
109	Urban Council
110	Director of Urban Services
111	Urban Council
111B	Urban Council
111C	Urban Council
112	Urban Council
112A	Urban Council
114	Director of Lands in respect of cemeteries specified in Parts I, II, and IV of the Fifth Schedule
115	Urban Council in respect of cemeteries specified in Part I of the Fifth Schedule
116	Urban Council in respect of cemeteries specified in Parts I and II of the Fifth Schedule
117	Urban Council
118(1) and (4)	Urban Council
118(2)	Director of Urban Services in respect of cemeteries specified in Parts I,II and IVA of the Fifth Schedule
119A	Urban Council in respect of cemeteries specified in Part I of the Fifth Schedule
121	Urban Council
123	Urban Council
123A	Urban Council
123B	Urban Council
123C	Urban Council
124	Urban Council
124A	Urban Council
124B	Urban Council
124C	Urban Council
124D	Urban Council
124E	Urban Council
124I(1)(a) - (d)	Urban Council

124I(1)(e) - (h)	Director of Food
(i) - (t)	Urban Council
124J(1)	Urban Council
124J(3)	Urban Council
124K	Urban Council
124L	Urban Council, but in respect of sections 124I(1)(e)-(h), the Director of Food
127	Urban Council”

SCHEDULE 5,

section 2	In the proposed section 6(4A) - (a) By repealing subsection (a); (b) By renumbering subsection (b) as subsection (a).
section 3	By deleting the proposed section 6A and substituting - ”Section 6A is amended - (a) by deleting subsections (3), (4) and (5); (b) in subsection (7) by deleting “or the Regional Council as the case may be.”
section 4	(a) By deleting paragraph (b) and substituting - “(b) in the definition of “prescribed fee” by repealing everything after “or,” and substituting “or the fee determined under section 6A(1) of the Ordinance;”; (b) In paragraph (c), by deleting the definition of “Board” and substituting - ““Board” means the Urban Council”
section 6	By repealing the proposed section 2A.
section 7	By deleting the proposed repeal of Regulation 3.

SCHEDULE 1

AMENDMENTS TO PROVISIONAL URBAN COUNCIL ORDINANCE AND ITS SUBSIDIARY LEGISLATION

[s.3]

Provisional Urban Council Ordinance

1. Long title amended

The long title to the Provisional Urban Council Ordinance (Cap. 101) is amended by repealing “Provisional.”

2. Short title

Section 1 is amended by repealing “Provisional”

3. Interpretation

Section 2 (1) is amended -

- (a) In the definition of “Council” by repealing “Provisional”
- (b) by repealing the definition of “Urban Council area”
- (c) by adding -

““appointed day” means the day appointed for the coming into operation of section 3 of the Provision of Municipal Services (Reorganization) Ordinance”

4. Section substituted

Section 3 is repealed and the following substituted -

“3-(1) The Urban Council is a body corporate with perpetual succession and may sue and be sued in the corporate name of the Urban Council.

(2) The standing orders and rules of procedure of the Provisional Urban Council immediately before the appointed day apply to the Urban Council subject to the changes that the Urban Council may make and the changes that may be necessarily implied arising out of the change in name of and composition in the membership of the Urban Council.

(3) The Stamp Duty Ordinance (Cap. 117) does not apply to the vesting in the Urban Council of the Property and rights

transferred by virtue of the Provision of Municipal Services (Reorganization) Ordinance.

5. Certain contracts and instruments not required to be under seal

Section 5 is repealed.

6. Declaration of Urban Council area

Section 5A is repealed.

7. Urban Council

Section 6(1) is repealed and the following substituted -

“6(1) The Council shall consist of not more than 80 members, with 59 being elected through universal suffrage, 18 being representative members from each District Council and 3 being representative members from the Heung Yee Kuk.”

8. Sections added

The following is added -

“7. Tenure of office of elected members

(1) The elected members shall hold office -

(a) in the case of a member elected at an ordinary election for the Council for 4 years next following the notification in the Gazette of his election;

(b) in the case of a member elected to fill a vacancy caused by an elected member ceasing to be member, from the date of the notification in the Gazette of his election until the date when the elected member whom he succeeded would otherwise have ceased to hold office.

7A. Election and tenure of office of representative members

(1) Each District Council or Heung Yee Kuk shall, at a meeting of the District Council or the Heung Yee Kuk, as the case may be, elect one of its members as its representative member on the Council in accordance with the voting

procedure set out in the Fifth Schedule and, subject to this subsection, according to such procedures as the District Council or the Heung Yee Kuk may determine by its standing orders.

(2) The secretary of the District Council or Heung Yee Kuk shall be the returning officer for the election of a representative member.

(3) An elected member of the Council, who is also a member of a District Council or Heung Yee Kuk, as the case may be, is not qualified for election as a representative member of the Council.

(4) Each District Council or Heung Yee Kuk shall, in the month following the month in which an ordinary election for the District Council or the Heung Yee Kuk, as the case may be, is held, elect one of its members as its representative member for a term commencing on the first day of the month following the holding of the election and expiring on 30 September in the year in which the next ordinary election for the District Council or Heung Yee Kuk is held.

(5) Where the office of a representative member becomes vacant, the District Council or the Heung Yee Kuk, as the case may be, shall elect another representative member not earlier than one month from the date of publication of the vacancy in the Gazette and the new representative member shall hold office from the date of notification of his election in the Gazette for the balance of the term of office that the former member would have served if his office had not become vacant.

(6) The Chairman of a District Council or Heung Yee Kuk, as the case may be, shall notify the Chief Executive in writing of the result of the election of a representative member as soon as practicable after the election.

(7) The Secretary shall publish notice of the election or any vacancy of the office of a representative member in the Gazette.”

9. Disqualification from appointment

Section 10A is repealed.

10. Non-acceptance of office

The following section is added -

- “14. (1) A person may decline to accept office as a member by giving notice in writing to the Secretary at any time before his term of office commences.
- (2) If a person gives the Secretary notice of non-acceptance of office as a member, the Secretary shall publish the notice in the Gazette and the person shall be disqualified from holding office from the date of publication in the Gazette but may be elected at a subsequent election.

11. Validity of acts of the Council

Section 34 is amended by adding “election or “before “qualification”.

12. Section Added

The following section is added -

“36A. Funds of the Council

The funds of the Council shall consist of -

- (a) all moneys appropriated by the Legislative Council for the purposes of the Council
- (b) all moneys lawfully received by the Council by way of grants, loans, funds, donations, fees, rent or interest.”

13. Estimates

Section 39 is amended : -

“(a) by deleting subsection (1) and substituting -

(1) Not later than 2 months before the end of each financial year the Council shall prepare and submit to the Legislative Council for its approval estimates of its revenue and expenditure for the next financial year together with a list of works which the Council proposes to undertake during the next financial year.”

(b) by adding subsection (5) :-

(5) During any financial year, the Council may, for the purpose of implementing its undertaking submitted and approved under subsection (1) of this section submit

supplementary estimates to the Legislative Council for its approval.”

14. Audit

Section 40(4) is amended by repealing “Governor” and substituting “Legislative Council”

15. Reduction etc. of fees and charges

Section 41B is amended by repealing subsection (2).

16. Saving

Section 54 is amended by repealing “Provisional”

17. Election of first Chairman and Vice-Chairman

Section 55 is amended -

(a) in subsection (1) by repealing “Provisional Urban Council before 1 July 1997” and substituting “Urban Council 7 days after the appointed day”

(b) in subsection (5) by repealing “Provisional Urban Council to be held on or before 31 July 1997” and substituting “Urban Council to be held on or before 31 July 2000.”

(c) by adding subsections (7) and (8)

“(7) The Chairman elected at the first meeting after the appointed day is the delegate of the Council for the purpose of section 36 of the Urban Council Ordinance (Cap. 101) in the event that a delegation saved under the Provision of Municipal Services (Reorganization) Ordinance lapses. This delegation continues until the Council resolves otherwise.

(8) The Chairman may delegate the powers delegated to him under subsection (7) in accordance with the relevant Ordinances.”

18. Saving of certain appointment

Section 57 is amended by repealing “30 June 1997” and substituting “30 June 2000”.

19. SCHEDULE 1

SCHEDULE 1 is amended by repealing “Provisional” where it twice

appears.

20. SCHEDULE 5

SCHEDULE 5 is amended -

(a) in paragraph 1 by adding “a representative member under section 7A(1) or” before “a Chairman”.

(b) in paragraph 1A by adding “a representative member under section 7A(1) or” before “a Chairman”.

21. Declaration of Urban Council Area Order 1994

The Order is repealed.

The Administration's Preliminary Comments on Draft Committee Stage Amendments Proposed by Members

CSAs proposed by Hon. Li Wah-ming [Paper No. CB(2)245/99-00(03)]

Schedule 3, section 256: Restriction on alteration of premises or fittings after grant of licence

During the discussion at the Bills Committee of 5 November, it appeared that Members agreed that the phrase "material deviation" was preferred to "unreasonable deviation". On the understanding that the proposed amendment is to add the word "material" before "deviation" in section 34(a) of the Food Business Regulation, we have no objection to the proposed amendment.

Schedule 3, section 462: Conditions for the issue of offensive trade licence

We have no objection to the general thrust of the proposed amendment to the Offensive Trades Regulation. Our Senior Assistant Law Draftsman has passed to the Legal Advisor to LegCo a suggestion on how to improve the wording of the amendment.

Schedule 3, section 690: Power of manager to direct persons in certain cases to leave a stadium

We have reservation about the proposed repeal of section 7(1)(a)(i) of the Stadium Regulation which empowers the stadium manager to direct any person whom he reasonably believes to have committed or be about to committed any offence punishable under the Summary Offence Ordinance (Cap.228) to leave the stadium. The provision enables the stadium manager to prevent spectators from bringing into the stadium items which could be used to cause disorder such as metal poles, sticks, stone, other missile and aerosol spray items. We need this authority to enable the manager to prevent any possible breach of public order in a stadium.

Schedule 4, section 5: Constitution of Municipal Services Appeals Board

We understand that the latest thinking of Hon. Li Wah-ming is that the Vice Chairmen of the 18 District Councils (DC) should become ex-officio members of the Municipal Services Appeals Board (MSAB) and that one of these ex officio members should be nominated to attend the hearing of each appeal case. We agree in principle to enhancing the input of DC members in the MSAB. We are still considering how this could best be achieved. One option is to

appoint more DC members (including DC Chairmen and Vice Chairmen) as members of the MSAB and to advise the Chairman of the MSAB to nominate at least one DC member to hear any appeal. Another option is to make the DC Chairmen and/or Vice Chairmen ex-officio members and to nominate one of them to attend each hearing in place of the existing PMC member on the Board. We shall decide on the preferred approach as soon as possible.

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

Schedule 3, section 61: Provision for hearing objections where application for crematorium in certain locations

- We understand that Mr Li intends to revise the draft CSA to clarify the procedure for gazetting a proposal for adding any facility which is directly related to the burning of human remains in a government crematorium. We have reservation about the proposal of extending the jurisdiction of MSAB to cover such objections because the facility is added to an existing crematorium and sufficient consultation will be undertaken before a decision is made. The Administration will consult the relevant District Council(s) before finalising any proposal to add new facilities in an existing crematorium, if the addition has any significant impact on the local environment. Such a proposal will also likely be discussed at the relevant LegCo Panel and subject to the scrutiny of the Finance Committee of the Legislative Council where funding approval has to be sought.
- The proposal to subject “the addition of any facility which is directly related to the burning of human remains” to the objection procedure might result in unnecessary delay in implementing minor improvements of the facilities in the crematoria.

Schedule 3, section 615: Letting of market stalls: appeal mechanism for disputes over market stall rentals

It would not be appropriate for the MSAB to hear appeals on market stall rentals. MSAB members are generalists who do not have expert knowledge on such matters. Any revision of market stall rentals will be set with reference to the new open market rent (OMR) assessed by the Rating and Valuation Department (RVD). We believe that an objective yardstick is important in determining market stall rental. RVD is in the best position to make an objective OMR assessment as it has comprehensive information on open market rents. In future, any market stallholder who disagrees with the OMR assessed by the

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. The proposed mechanism of review by RVD has worked reasonably well with the Provisional Urban Council. It should be noted that the new Food and Environmental Hygiene Department will review the policy of market stall rentals after the reorganisation. We will report to the relevant LegCo panel on the outcome of our review.

CSAs proposed by Hon. Lee Wing-tat [Paper No. CB(2)321/99-00(01)]

Schedule 3, section 446: Times during which museums are open to public

- The proposal to fix the weekly closing day of all museums on Tuesdays is not user-friendly. Moreover, tourists who stay in Hong Kong for a short period and find all museums closed on Tuesday might be aggrieved. Among the 12 existing PMC museums, 2 close on Mondays, 6 close on Tuesdays, 1 closes on Wednesdays, 2 close on Thursdays and 1 closes on Fridays.
- Currently, the major museums (History Museum, Arts Museum, Science Museum and Space Museum) only close on the first and second days of the Lunar New Year. However the 8 smaller museums close on four additional public holidays (namely, Christmas Day and the day following, New Year Day and the third day of the Lunar New Year). We consider that flexibility in opening times should continue to be allowed in view of the different scale, locations and characteristics of the museums.
- We agree that the opening times of museums should be kept under review to examine the feasibility of increasing the overall opening hours. However, an inflexible schedule without due regard to use patterns and cost-effectiveness will result in ineffective use of resources.

Schedule 3, section 500: Vehicles

We have no objection to the proposed amendment.

Schedule 3, section 559: Government or Director not liable for loss of or damage to articles

We have reservation about the proposed repeal of the provision. The relevant provisions in the UC and RC Bylaws were amended by the then Municipal

Councils in 1995/96 to ensure that the Government and the Councils' liabilities for losses or damages to articles inside graves were excluded from civil action in the event of natural disasters such as landslips. Public cemeteries are all outdoor, some of which are even without boundary walls/fences. While the Government will fulfil its duties by re-instating or relocating graves damaged by natural disasters such as typhoons and landslips, it cannot possibly ascertain what articles are placed inside the graves and be liable for losses or damages to articles inside or above the graves. The deletion of the section could lead to unwarranted work in the investigation and processing of unjustified or unfounded claims. There is no convincing reason for reverting the decisions of the Municipal Councils made fairly recently.

Schedule 3, section 591 and 597: Conduct in public conveniences and Saving

We have no objection to the proposed CSAs to the Public Conveniences (Conduct and Behaviour) Regulation

CSAs proposed by Hon. Ambrose Cheung [Paper No. CB(2)349/99-00(01)]

General Comments

We have explained to the relevant LegCo Panels and the Bills Committee on numerous occasions the reasons for objecting to the "One (Urban Services) Council, One (Urban Services) Department" proposal. Briefly, our main concerns are that:

- (a) the proposed "Urban Services Department" underpinning the so called "Urban Council" would comprise some 26 000 staff. Because of its huge size, the department would be difficult to manage;
- (b) the proposal fails to address the problem of fragmentation of responsibilities for food safety and environmental hygiene. To put food safety and environmental hygiene functions under the Government and the proposed Urban Council respectively would compromise efficiency and undermine effective co-ordination; and
- (c) there would continue to be overlapping of responsibilities between the proposed Council, the Home Affairs Bureau and other statutory and advisory bodies (such as the Arts Development Council) in the areas of arts and sports. It fails to address the problems raised by the arts and sports community concerning the lack of overall culture and sports policies and less than optimal use of resources.

- The proposed CSAs have not covered many provisions in the Bill which need to be amended in order that the new structure proposed by Mr Cheung can function and work properly. The CSAs, read with the Bill, do not constitute a comprehensive or coherent legislative scheme. Mr Cheung's CSAs are quite inadequate to give effect to his proposal. If they are enacted, they would create confusion and give rise to many uncertainties, arguments and grievances.

Specific Comments

Clause 2: Interpretation

“Other municipal services” is defined as “functions and powers of the Urban Council other than food safety matters”. This implies that food safety matters also fall within the powers and functions of the Urban Council and is not consistent with the other provisions such as clause 6A and 6B.

Clause 5(1): Early termination of existing contracts

The proposal to allow the other contracting party to terminate an agreement or contract with the Provisional Municipal Councils (PMCs) by giving at least 30 days notice in writing may have undesirable consequences. It may be exploited by contractors who want to avoid their contractual obligations. This may affect the continuity of services and result in loss to the public as well as the Government.

Clauses 6A and 6B: Vesting of property, rights and liabilities and other savings in relation to food safety matters and other municipal services

It appears that these clauses intend to transfer the property, rights and liabilities of the PMCs to Government in respect of food safety matters and those in relation to other municipal services to a new Urban Council (UC). Such a proposal is impracticable because:

- (a) in respect of some of the existing contracts such as contracts to supply goods and services, the contracting parties (including the PMCs) had not distinguished whether the contract was for the purpose of food safety matters or other municipal services when they entered into the contract. In doubtful cases, the contracting parties would not be able to know from the CSA whether the Government or the UC or neither of them would take over the contract and it may not be in the interest of the parties to terminate the contract;

- (b) food safety matters are closely related to other municipal services. It is not possible to apportion and identify which property of PMCs is in relation to food safety matters and which property is in relation to other municipal services. The same problem applies to such matters as guarantees, indemnities, insurance policies, money assets, intellectual property rights; and
- (c) the legal claims against the PMCs may not necessarily be confined to food safety matters or other municipal services. For instance, the PMCs may be sued on liabilities incurred by them as legal persons (e.g. liability in tort) which do not arise out of their statutory functions. It appears that neither the Government nor the UC could be held liable in such circumstances.

Schedule 4 [Schedule 3 of the Bill], Section 66: General provisions as to licences, etc.

We propose to set up a Licensing Appeals Board (LAB) to replace the review committees of the PMCs under this clause. It appears from Mr Cheung's proposed CSA that both a review committee of the UC and the LAB would be set up. The proposed three-tier review/appeal mechanism (i.e. review committee, LAB and Municipal Services Appeals Board) will lead to more duplication and may subject the appellant to unnecessarily lengthy and costly appeal procedures.

Third Schedule: Designated authorities

- *The CSA proposes to transfer functions related to food safety matters to the "Director of Food". We do not have a Director of Food in the civil service nor a Department of Food in the government structure.*
- The new Third Schedule cannot work if the repeal of references to "public body" in section 3 of the Public Health and Municipal Services Ordinance (Cap. 132) proposed in the Bill are enacted.

New Schedule 1, Clauses 7: Urban Council and Clause 17: Election of first Chairman and Vice-Chairman

Clause 7 proposes that the UC will have 80 members among whom 59 are elected through universal suffrage. Clause 17 proposes that the first meeting of the UC is to be held 7 days after the appointed day. There is however no provision on how an election of the 59 members is to be held and who are

eligible to be elected members.

Other Comments

- It appears that the CSAs have not covered all the provisions in the Bill (including the Schedules) which have the effect of transferring the powers from the PMCs to Government, resulting in a lot of contradictions in the statutory provisions. For example, the references to the Urban Council and “public body” repealed by the Bill may have to be reinstated. The references to the Director of Food and Environmental Hygiene and the Director of Leisure and Cultural Services in the subsidiary legislation of the Public Health and Municipal Services Ordinance (Cap. 132) as amended by the Bill should also be amended. Otherwise, they would be inconsistent with the proposed CSAs to the Third Schedule of Cap.132.

- The CSAs have not followed the commonly adopted drafting conventions. For example, the new Clause 14 which states that “Schedule 1 shall become Schedule 2” etc. may cause confusion about the numbering of the Schedules to the Bill. The numbers of the Schedule to the Bill cannot be changed by merely adding a new section to the main clauses as proposed. Amendments will have to be made to the text of the Bill (i.e. textual amendments) to effect a change in the numbering.

Constitutional Affairs Bureau
17 November 1999

response