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Secretary for Security
(Attention: Mr Damian CHAN,
Assistant Secretary, AS(S)B2)
Security Bureau
6/F Main and East Wings
Central Government Offices
Hong Kong

9 October 2001

BY FAX
Fax No. : 2868 9159
Total no. of pages : (10)

Dear Mr Chan,

Fire Services (Amendment) Bill 2001

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following matters:

Clause 4 - proposed section 8A

- (a) If a person does not give an answer or fails to produce documents in accordance with a requirement under proposed section 8A(2)(f)(ii) and 8A(2)(g) for the reason that the answer is not within his knowledge or the documents are not in his possession, will that person incur criminal liability under the Bill?
- (b) Under proposed section 8A(2)(f)(iii), a person may be required to sign a declaration of the truth of the answer he gives to the Director of Fire Services. The person may be prosecuted for an offence under section 36 of the Crimes Ordinance (Cap. 200) if he knowingly and wilfully makes a statement in the declaration which is false in a material particular. However, if the information contained in the statement is not false but is misleading in a material particular, it would appear that section 36 of the Crimes Ordinance is not applicable. In such case, what legal consequences, if any, does that person have to face for providing misleading information to the Director under the Bill?

- (c) Will there be any legal consequences if a person who, in purportedly complying with a requirement imposed under proposed section 8A(2)(g), produces any document which is false or misleading?
- (d) In proposed section 8A(3), apart from documents, should the legal professional privilege be extended to information which a person may be required to give under proposed section 8A(2)(f)? If so, should this be clearly stipulated in the section?
- (e) Why is the obligation of non-disclosure proposed under section 8A(5) confined to information obtained from an answer given under subsection (2)(f)? Should such obligation apply to information contained in the documents produced under subsection (2)(g) as well?

Clause 4 - proposed section 8B

Why is proposed section 8B confined to answers to questions asked under section 8A(2)(f)(ii)? If a document required to be produced under proposed section 8A(2)(g) tends to incriminate a person who produced it, is it intended that such document will be admissible in evidence against the person in criminal proceedings? If so, how will such use of the document be consistent with Articles 10 and 11 of the Hong Kong Bill of Rights, which respectively guarantee a person's right to a fair hearing and the right to be presumed innocent?

Clause 10 - proposed section 25

The Bill proposes to empower the Chief Executive in Council to make regulations to provide for matters relating to abatement of fire hazards. It is noted that new offences which carry heavy penalties are created in the proposed Fire Service (Fire Hazard Abatement) Regulation ("the proposed Regulation") annexed to the LegCo Brief. As the proposed Regulation seeks to introduce important proposals relating to fire hazard abatement, will the Administration consider making the proposed Regulation subject to LegCo's approval (instead of subject to section 34 of Cap. 1, as currently proposed) so that Members would have more time to examine the provisions therein?

Clause 20 - Consequential Amendments

In the proposed definition of "fire service installation or equipment" in the Places of Public Entertainment Regulations (Cap. 172 sub. leg.) and the Fire Safety (Commercial Premises) Ordinance (Cap. 502), is it necessary to add "or place" after "any premises" in paragraph (d) of the proposed definition in line with the proposed definition of the same term in the Public Health and Municipal Services Ordinance (Cap. 132)? It is noted that in the Fire Services Ordinance (Cap. 95), "premises" is defined to include any place and

hence there is no need to include the reference to place in the proposed definition of "fire service installation or equipment" in Cap. 95. However, there is no such definition of premises in Cap. 172 and Cap. 502.

Chinese text

My comments on the Chinese text of the Bill have been marked up on the relevant pages which are enclosed for your consideration.

I would appreciate it if you can let me have your reply in both English and Chinese as soon as possible.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

Encl.

c.c. Department of Justice (Attn: Ms Phyllis POON, GC)
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- (e) 在沒有正常動力供應時向作(a)至(d)段所述用途的裝置或設備提供後備動力供應；”。

4. 加入條文

現加入——

The English text does not refer to an installation or equipment used for the purposes mentioned in paragraphs (a) to (d). Please make both the English and Chinese texts match.

“8A. 調查火警的一般權力

(1) 處長或處長書面授權的任何成員可在出示其授權書(如有人要求出示)後,於在任何處所之內或之上發生的火警被撲滅後的一段合理期間內,為調查該火警的成因或其他與該火警有關的事宜進入該處所。

(2) 處長或成員在進入該處所後——

- (a) 可在一段為第(1)款提述的目的而合理所需的時間內,留在該處所之內或之上;
- (b) 可移走和接管處長或該成員有合理理由相信為第(1)款提述的目的而需要的在該處所之內或之上發現的物品或東西;
- (c) 可以處長或該成員覺得為檢查或化驗而合理所需的方法處理(b)段提述的物件或東西;
- (d) 可在一段為檢查或化驗而合理所需的時間內保留(b)段提述的物件或東西;
- (e) 可拍攝處長或該成員有合理理由相信為第(1)款提述的目的而需要的照片和錄影該等紀錄;
- (f) 可規定任何對處長或該成員有合理理由相信能夠提供第(1)款提述的目的屬有關的資料的人——
 - (i) 按照處長或該成員指明的時間與地點出席;
 - (ii) 在只有處長或該成員許可出席的人及一名由該被規定出席的人指定的人在場的情況下,回答處長或該成員認為適合發問的問題;及

Should "f" be added here?

- (e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;”。

4. Sections added

The following are added—

“8A. General powers of fire investigation

(1) Within a reasonable period after a fire in or on any premises has been extinguished, the Director or any member authorized by the Director in writing on producing, if so required, the document showing the member's authority, may enter the premises for the purpose of investigation into the cause of or other matters relating to the fire.

(2) Having entered the premises, the Director or member—

- (a) may stay in or on the premises for so long as it is reasonably necessary for the purpose referred to in subsection (1);
- (b) may remove and take possession of any article or thing found in or on the premises that the Director or member has reasonable cause to believe is necessary for the purpose referred to in subsection (1);
- (c) may deal with the article or thing referred to in paragraph (b) in such a way as appears to the Director or member to be reasonably necessary for examination or analysis;
- (d) may retain the article or thing referred to in paragraph (b) for so long as it is reasonably necessary for examination or analysis;
- (e) may take such photographs and make such video recordings as the Director or member has reasonable cause to believe is necessary for the purpose referred to in subsection (1);
- (f) may require any person whom the Director or member has reasonable cause to believe is able to give any information relevant to the purpose referred to in subsection (1)—
 - (i) to attend at a time and place specified by the Director or member;
 - (ii) to answer (in the absence of persons other than any person whom the Director or member may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the Director or member thinks fit to ask; and

(iii) 就該人的答案的真實性簽署聲明；

(g) 可規定任何人出示處長或該成員有合理理由相信為第(1)款提述的目的而需要的文件，並可加以查閱及製作副本；

(h) 可規定任何人就受他控制的或他所負責的物件或東西，向處長或該成員提供處長或該成員認為為行使本款授予的權力而合理所需的便利及協助。

(3) 本條不得解作強逼任何人交出該人基於法律專業保密權的理由會有權不交出的文件。

(4) 處長或成員在離開根據本條進入的任何無人佔用的處所時，須令該處所的狀況在防禦侵入者方面的有效程度，一如他在進入時所察覺到的狀況。

(5) 處長或成員——

(a) 如在根據第(2)(f)款作出的回答中取得資料；或

(b) 如遵從本條規定進入工廠、工場、工作地點或用作商業用途的處所，

並向任何人披露他在根據第(2)(f)款或在該工廠、工場、工作地點或處所就製造過程或商業秘密取得的資料，除非他是為執行職責而作此披露，否則他即屬犯罪，可處第4級罰款。

(6) 本條不影響警務處處長在《火警調查條例》(第12章)下的權力。

8B. 可導致刑事法律責任的回答

如回答根據第8A(2)(f)(ii)條發問的問題的答案，可能導致回答該問題的人入罪，則在刑事法律程序中，該問題及答案均不得接納為針對該人的證據；但檢控《刑事罪行條例》(第200章)第36條就該答案所訂的罪行的法律程序除外。

The way the Chinese text is drafted does not appear to reflect the meaning of the English text. Should the Chinese text have be amended to "但就該答案而根據《刑事罪行條例》(第200章)第36條所訂罪行進行法律程序除外"?

(iii) to sign a declaration of the truth of the person's answer;

(g) may require the production of, and inspect and take copies of documents that the Director or member has reasonable cause to believe is necessary for the purpose referred to in subsection (1);

(h) may require any person to afford the Director or member such facilities and assistance with respect to any article or thing within that person's control or in relation to which that person has responsibilities as the Director or member considers reasonably necessary to exercise any of the powers conferred by this subsection.

(3) Nothing in this section shall be taken to compel the production by any person of a document of which the person would on grounds of legal professional privilege be entitled to withhold production.

(4) On leaving any unoccupied premises that the Director or member entered under this section, the Director or member shall leave them as effectually secured against trespassers as the Director or member found them to be at the time of entry.

(5) If the Director or member who—

(a) obtains any information from the answer given under subsection (2)(f); or

(b) in compliance with this section, enters a factory, workshop, workplace or premises used for business purposes,

discloses to any person any information obtained by the Director or member under subsection (2)(f) or in the factory, workshop, workplace or premises with regard to any manufacturing process or trade secret, the Director or member shall, unless the disclosure is made in the performance of the Director's or member's duty, be guilty of an offence and shall be liable to a fine at level 4.

(6) This section shall not affect the power of the Commissioner of Police under the Fire Investigation Ordinance (Cap. 12).

8B. Answers that may implicate criminal liability

If an answer to a question asked under section 8A(2)(f)(ii) tends to incriminate the person who gave the answer, neither the question nor the answer shall be admissible in evidence against the person in criminal proceedings other than proceedings for an offence under section 36 of the Crimes Ordinance (Cap. 200) in respect of the answer given.

- (b) 可在訂明的情況下，安排就任何處所進行任何工程，並向任何人討回所招致的費用；
- (c) 可在訂明的情況下，移走和接管任何物件或東西，並以訂明的方式將之處置；
- (d) 可在訂明的情況下，安排將關於與某人就本條例所訂罪行被檢控、被定罪、被判無罪，或成功上訴推翻該罪行的定罪有關的處所的資料，在土地註冊處註冊；
- (e) 可安排以訂明的方法公布就本條例所訂罪行的定罪；
- (f) 可向法院或裁判法院申請具有以下效力的命令——
- (i) 按照根據第 25(1)(hb)(ii) 條所訂的規例封閉與某人被裁定犯本條例所訂罪行有關的處所；
 - (ii) 按照根據第 25(1)(hb)(iv) 條所訂的規例禁止將處所作特定的用途；
 - (iii) 規定任何人消除火警危險或防止其再度出現；或
 - (iv) 規定任何人移走阻塞或可能阻塞處所的逃生途徑，或鎖上或可能鎖上處所的逃生途徑的物件或東西。”。

Since the English text refers to "in any premises", should the Chinese text be amended to "任何處所"? Please refer to a similar Chinese text in existing section 9B of Cap. 95.

The corresponding English text does not refer to "具有以下效力"。 Please make the Chinese and English texts match.

6. 廢除條文

第 9A、9B、9C 及 9D 條現予廢除。

7. 部屬人員或員佐級成員潛逃時可被即時革職

第 13A(1) 條現予修訂，廢除 "21" 而代以 "14"。

8. 部屬人員或員佐級成員犯違紀行為

第 14(8) 條現予廢除。

- (b) may, under the prescribed circumstances, cause to be carried out any works in respect of any premises and recover the expenses incurred from any person;
- (c) may, under the prescribed circumstances, remove and take possession of any article or thing and dispose of it in the prescribed manner;
- (d) may, under the prescribed circumstances, cause to be registered in the Land Registry any information concerning any premises in relation to which a person is charged with, convicted of, acquitted of or successfully appeals against a conviction of an offence under this Ordinance;
- (e) may cause to be publicised by the prescribed means the fact of a conviction of an offence under this Ordinance;
- (f) may apply to a court or magistrate for an order—
- (i) to close any premises in relation to which a person has been convicted of an offence under this Ordinance in accordance with the regulation made under section 25(1)(hb)(ii);
 - (ii) to prohibit any premises to be used for a particular purpose in accordance with the regulation made under section 25(1)(hb)(iv);
 - (iii) that requires a person to abate a fire hazard or prevent it from recurring; or
 - (iv) that requires a person to remove any article or thing that obstructs or may obstruct, or locks or may lock any means of escape in any premises;”.

6. Sections repealed

Sections 9A, 9B, 9C and 9D are repealed.

7. Liability of subordinate officers and members of other ranks to summary dismissal upon abscondment

Section 13A(1) is amended by repealing "21" and substituting "14".

8. Offences against discipline by subordinate officer and member of other ranks

Section 14(8) is repealed.

The meaning of "any means of escape" has not been reflected in the corresponding Chinese text. Please add "任何" before "逃生途徑" in the Chinese text or amend the English text to "the means of escape" which is currently used in section 9B of Cap. 95.

9. 取代條文

第21條現予廢除，代以——

“21. 火警造成的損毀

(1) 除第(2)款適用的情況外，消防處在火警發生時或引致即時火警危險事故發生時執行其職責所造成的損毀，須視作任何火險保單所指的火警所導致的損毀。

(2) 就在緊接《2001年消防(修訂)條例》(2001年第 號)第9條生效之前簽立的火險保單而言，消防處在火警發生時執行其職責所造成的損毀，須視作該火險保單所指的火警所導致的損毀。”

10. 訂立規例的權力

第25條現予修訂——

- (a) 將該條重編為第25(1)條；
- (b) 在第(1)款中，加入——

- “(hb) 法院或裁判法院作出命令，勸令——
- (i) 任何人消除火警危險或防止火警危險再度出現；
 - (ii) 封閉與某人被裁定犯本條例所訂罪行有關的處所；
 - (iii) 撤銷或暫停執行第(ii)節所指的命令；
 - (iv) 禁止將處所作特定的用途；
 - (v) 任何人移走阻塞或可能阻塞處所的逃生途徑，或鎖上或可能鎖上處所的逃生途徑的物件或東西；
 - (vi) 終止處所的租賃；
- (hc) (hb)段所指的命令的程序和其他與其有關的事宜；
- (hd) 防止阻塞和鎖上處所的逃生途徑；
- (he) 對在陸上運送裝載汽車或汽車的一部分(其油缸內載有燃油或以其他方式沾有燃油)的貨櫃作出規管；

Should “勸令” be deleted and “規定” be added have to reflect the meaning of “requires”?

Should “處所” be amended to “任何處所內” to reflect the meaning of “in any premises”.

Should “任何” be added before “逃生途徑” to reflect the meaning of “any means of escape”?

why is “勸令” necessary given that there is no such reference in the English text?

9. Section substituted

Section 21 is repealed and the following substituted—

“21. Damage done at a fire

(1) Save where subsection (2) applies, a damage done by the Fire Services Department in the discharge of its duty on the occasion of a fire or an incident that may pose an immediate danger of fire is taken to be a damage by fire within the meaning of a policy of insurance against fire.

(2) For the purpose of a policy of insurance against fire that was executed immediately before the commencement of section 9 of the Fire Services (Amendment) Ordinance 2001 (of 2001), a damage done by the Fire Services Department in the discharge of its duty on the occasion of a fire is taken to be a damage by fire within the meaning of the policy of insurance against fire.”

10. Power to make regulations

Section 25 is amended—

- (a) by renumbering it as section 25(1);
- (b) in subsection (1), by adding—

- “(hb) the making of an order by a court or magistrate—
- (i) that requires a person to abate a fire hazard or prevent it from recurring;
 - (ii) that closes any premises in relation to which a person has been convicted of an offence under this Ordinance;
 - (iii) that rescinds or suspends an order under subparagraph (ii);
 - (iv) that prohibits any premises to be used for a particular purpose;
 - (v) that requires a person to remove any article or thing that obstructs or may obstruct, or locks or may lock any means of escape in any premises;
 - (vi) that terminates the tenancy of any premises;
- (hc) the procedure and other matters relating to an order under paragraph (hb);
- (hd) the prevention of obstruction to and locking of any means of escape in any premises;
- (he) the regulation of the conveyance on land of a container that contains a motor vehicle or a part of a motor vehicle, which has fuel in its fuel tank or is otherwise stained with fuel;

Please refer to comments on proposed section 9(f)(iv) on p. C1091 above

- (hf) 對將汽車或汽車的一部分(其油缸內載有燃油或以其他方式沾有燃油)存放於在陸上運送或將在陸上運送的貨櫃作出規管;
- (hg) 任何訂明公職人員截停、登上及搜查車輛並檢取、移走及扣押該車輛之內或之上或藉其運載的與本條例所訂罪行有關的物件或東西的權力;
- (hh) 禁止為提供訂明物質以供轉注入汽車的油缸的業務而在訂明處所之內或之上管有或控制該物質;
- (hi) 處長在訂明的情況下向某人取得個人詳情或書面授權成員這樣做的權力;
- (hj) 任何處所的擁有人、租客、佔用人或負責人對明知而許可或容受有人在該處所之內或之上犯本條例所訂罪行的法律責任;
- (hk) 任何人對在明知將會有人在某處所之內或之上犯本條例所訂罪行的情況下(不論以主事人或他人的代理人的身分)將該處所出租或同意將該處所出租的法律責任;
- (hl) 訂明根據本條例規定須予訂明的任何事情;”;

Should "任何人" be used here to reflect the meaning of "any person"?

(c) 加入——

“(2) 根據本條訂立的規例，可規定處長不得授權屬某職級的成員行使處長藉任何成文法則而有權行使的權力，或執行任何成文法則規定處長執行的任何職責。

(3) 根據本條訂立的規例可規定——

- (a) 凡違反規例的任何條文，即屬犯罪；及
- (b) 任何人違反規例，一經定罪，可處罰款不超過\$300,000及監禁不超過1年，如屬持續的罪行，則可另就每一日處罰款不超過\$30,000。”。

Is "不得" an appropriate Chinese text for "may not"? Should "不可" be used instead?

- (hf) the regulation of the stowage of a motor vehicle or a part of a motor vehicle, which has fuel in its fuel tank or is otherwise stained with fuel, in a container that is or is to be conveyed on land;
- (hg) the powers of any prescribed public officer to stop, board and search a vehicle and seize, remove and detain articles or things carried in, on or by the vehicle that is related to an offence under this Ordinance;
- (hh) the prohibition of possession or control of a prescribed substance in or on any prescribed premises for the purpose of a business of supplying the substance for transferring to the fuel tank of a motor vehicle;
- (hi) the power of the Director to obtain, or to authorize a member in writing to obtain, personal particulars from any person under the prescribed circumstances;
- (hj) the liability of the owner, tenant, occupier or person in charge of any premises who knowingly permits or suffers an offence under this Ordinance to be committed in or on the premises;
- (hk) the liability of a person who lets, or agrees to let, whether as principal or agent of another person, any premises with the knowledge that an offence under this Ordinance is to be committed in or on the premises;
- (hl) the prescribing of anything required to be prescribed under this Ordinance;”;

(c) by adding—

“(2) A regulation made under this section may provide that the Director may not authorize members of certain ranks to exercise a power or discharge a duty that the Director by any enactment is entitled to exercise or required to discharge.

(3) A regulation made under this section may provide that—

- (a) any contravention of the provisions of the regulation shall be an offence; and
- (b) any person who contravenes the regulation shall be liable on conviction to a fine not exceeding \$300,000 and to imprisonment for a period not exceeding 1 year, and in the case of a continuing offence, to a daily penalty not exceeding \$30,000.”.

《消防(裝置承辦商)規例》

16. 紀律委員會的權力

《消防(裝置承辦商)規例》(第95章, 附屬法例)第11(3)及(4)條現予修訂, 廢除“罰款 \$500”而代以“第2級罰款”。

17. 罰則

第16條現予修訂, 廢除“罰款 \$2,000”而代以“第3級罰款”。

《消防(裝置及設備)規例》

18. 註冊承辦商發出證明書

《消防(裝置及設備)規例》(第95章, 附屬法例)第9(2A)及(3)條現予修訂, 廢除“罰款 \$5,000”而代以“第5級罰款”。

19. 罰則

第12條現予修訂, 廢除“罰款 \$5,000”而代以“第5級罰款”。

第II部

相應修訂

《公眾衛生及市政條例》

20. 釋義

《公眾衛生及市政條例》(第132章)第2(1)條現予修訂, 在“消防裝置或設備”的定義中, 加入——

“(d) 在火警發生時利便自任何處所或地方疏散;

(e) 在沒有正常動力供應時向作(a)至(d)段所述用途的裝置或設備提供後備動力供應;”。

Please refer to comments on the definition of "fire service installation or equipment" on p. C 1084 above

Fire Service (Installation Contractors) Regulations

16. Powers of disciplinary board

Regulation 11(3) and (4) of the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg.) is amended by repealing “of \$500” and substituting “at level 2”.

17. Penalties

Regulation 16 is amended by repealing “of \$2,000” and substituting “at level 3”.

Fire Service (Installations and Equipment) Regulations

18. Issue of certificates by registered contractors

Regulation 9(2A) and (3) of the Fire Service (Installations and Equipment) Regulations (Cap. 95 sub. leg.) is amended by repealing “of \$5,000” and substituting “at level 5”.

19. Penalty

Regulation 12 is amended by repealing “of \$5,000” and substituting “at level 5”.

PART II

CONSEQUENTIAL AMENDMENTS

Public Health and Municipal Services Ordinance

20. Interpretation

Section 2(1) of the Public Health and Municipal Services Ordinance (Cap. 132) is amended, in the definition of “fire service installation or equipment”, by adding—

“(d) facilitating the evacuation from any premises or place in case of fire; (e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;”.

《公眾娛樂場所規例》

21. 釋義

《公眾娛樂場所規例》(第172章, 附屬法例)第2條現予修訂, 在“消防裝置及設備”的定義中——

(a) 在(b)段中, 廢除“或”;

(b) 加入——

“(d) 在火警發生時利便自任何處所疏散; 或

(e) 在沒有正常動力供應時向作(a)至(d)段所述用途的裝置及設備提供後備動力供應;”。

Please refer to comments on the definition of "fire service installation or equipment" on p. C1084 above

《消防安全(商業處所)條例》

22. 釋義

《消防安全(商業處所)條例》(第502章)第3(1)條現予修訂, 在“消防裝置或設備”的定義中——

(a) 在(c)段中, 在末處加入“或”;

(b) 加入——

“(d) 在火警發生時利便自任何處所疏散; 或

(e) 在沒有正常動力供應時向作(a)至(d)段所述用途的裝置或設備提供後備動力供應;”。

Please refer to comments on the definition of "fire service installation or equipment" on p. C1084 above

第III部

過渡性條文

23. 釋義

(1) 在本部中, “先前條例”(pre-existing Ordinance)指在本條例生效之前實施的《消防條例》(第95章)。

(2) 除文意另有所指外, 在本部中的字句須按照先前條例解釋。

Places of Public Entertainment Regulations

21. Interpretation

Regulation 2 of the Places of Public Entertainment Regulations (Cap. 172 sub. leg.) is amended in the definition of “fire service installations and equipment”——

(a) in paragraph (b), by repealing “or”;

(b) by adding——

“(d) facilitating the evacuation from any premises in case of fire; or

(e) providing a stand-by power supply to an installation and equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;”.

Fire Safety (Commercial Premises) Ordinance

22. Interpretation

Section 3(1) of the Fire Safety (Commercial Premises) Ordinance (Cap. 502) is amended in the definition of “fire service installation or equipment”——

(a) in paragraph (c), by adding “or” at the end;

(b) by adding——

“(d) facilitating the evacuation from any premises in case of fire; or

(e) providing a stand-by power supply to an installation or equipment under paragraphs (a) to (d) in the event of the loss of normal power supply;”.

PART III

TRANSITIONAL PROVISIONS

23. Interpretation

(1) In this Part, “pre-existing Ordinance” (先前條例) means the Fire Services Ordinance (Cap. 95) that was in force before the commencement of this Ordinance.

(2) Unless the context otherwise requires, words and phrases in this Part shall be construed in accordance with the pre-existing Ordinance.