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Paper for the House Committee

Report of the Subcommittee on Ocean Park Bylaw

Purpose

This paper reports on the deliberations of the Subcommittee on Ocean Park Bylaw.

Ocean Park Corporation Ordinance (Cap. 388)
Ocean Park Bylaw (L.N. 1 of 2003)

2. Under section 39 of the Ocean Park Corporation Ordinance (Cap. 388) (the Ordinance), Ocean Park Corporation (the Corporation) may make bylaws for the management and control of Ocean Park (the Park) and may provide that a contravention of any bylaw shall be an offence punishable with a fine not exceeding \$2,000 and imprisonment for not more than three months.
3. The Ocean Park Bylaw was made by the Corporation under section 39 of the Ordinance on 10 December 2002 (the 2002 Bylaw) and was tabled in Council on 15 January 2003. The 2002 Bylaw shall come into operation on 20 March 2003.
4. The 2002 Bylaw regulates the admission to, opening and closing of the Park. It also governs the use of facilities at the Park and its amusement rides and the conduct of persons in the Park.
5. To allow time for the Legal Service Division to seek clarification from the Administration on the concerns and queries raised by Members at the House Committee meeting on 24 January 2003, the Chairman of the House Committee moved a motion at the meeting of the Legislative Council (LegCo) on 12 February 2003 to extend the scrutiny period of the subsidiary legislation to 5 March 2003. The motion was passed by the Council.

The Subcommittee

6. The House Committee agreed at its meeting on 14 February 2003 to form a Subcommittee to study the 2002 Bylaw. The membership of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon James TO, the Subcommittee held a meeting on 18 February 2003 to discuss with the Administration and representatives of the Corporation.

Deliberations of the Subcommittee

Legal status of the Bylaws made by the Corporation in 1988 (the 1988 Bylaws)

7. Members note that the Legal Service Division has sought clarification from the Administration on the status of the 1988 Bylaws made by order of the Board of the Corporation on 28 April 1988, as the 1988 Bylaws cannot be found in the Laws of Hong Kong. The 1988 Bylaws provide that they should come into operation on 1 June 1988 and any person who contravenes a Bylaw commits an offence and is liable to a fine not exceeding \$2,000 and imprisonment for three months.

8. The Administration has responded that it had written to the management of the Corporation on 24 June 1997 advising the latter that the 1988 Bylaws were required to be published in the Gazette and subject to negative vetting by LegCo. The Administration has also pointed out that since the power to make the Bylaws is vested in the Corporation under section 39 of the Ordinance, it is the responsibility of the Corporation, in consultation with its own legal advisers, to ensure that the 1988 Bylaws are properly made and that proper procedures are followed. As regards the legal status of the 1988 Bylaws, the Corporation has advised that the 1988 Bylaws are incorporated into the contract between the Corporation and visitors to the Park made when admission tickets are purchased. Hence, those parts that are enforceable contractually may have legal effect.

9. Upon members' enquiry, the Administration has confirmed that bylaws made under section 39 of the Ordinance are subsidiary legislation and should therefore be published in the Gazette and subject to negative vetting by LegCo. The Administration explains that under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), subsidiary legislation means, among other things, bylaw made under or by virtue of any Ordinance and having legislative effect. In determining whether a bylaw or other instrument is subsidiary legislation, the Administration will consider the following criteria -

- (a) whether the bylaw is applicable to the general public or a class of the public as opposed to individuals;

- (b) whether it formulates a general rule of conduct as opposed to specifying conduct in specified cases;
- (c) whether it extends or changes the related legislation;
- (d) whether legislation has specified the bylaw as subsidiary legislation; and
- (e) the legislative intent of the related legislation.

The Administration has confirmed its view at the Subcommittee meeting that the 1988 Bylaws in the light of the above are subsidiary legislation.

10. The legal adviser to the Subcommittee agrees with the Administration that the 1988 Bylaws should have been gazetted and vetted by LegCo. She also draws members' attention to section 34 of the Interpretation and General Clauses Ordinance which stipulates that all subsidiary legislation shall be laid on the table of LegCo at the next sitting after the publication in the Gazette of that subsidiary legislation.

11. Members note that the legal adviser to the Corporation, however, holds a different view. According to the legal adviser to the Corporation, the 1988 Bylaws were made by the Corporation under section 39 of the Ordinance. Under the Ordinance, the Corporation can bring private prosecution for contravention of its bylaws. Moreover, the Corporation's bylaws are not applicable to the general public but only to people in the Park. There is also no provision in the Ordinance that specifies the requirement for its bylaws to be tabled and vetted by LegCo. The legal adviser to the Corporation therefore considers that the Corporation's bylaws are not subsidiary legislation and do not need to follow the legislative procedure for the latter.

12. However, representatives of the Corporation point out that in 1996 the Corporation initiated the amendment of the Bylaw to cope with the changing operating environment, and after consideration of the Administration's advice in relation to the tabling of the Bylaw, the Corporation has agreed to table the new set of Bylaw to go through the negative vetting procedure accordingly for the avoidance of doubt and taken all necessary steps to expedite the process.

13. Noting that the Administration has already been aware of the fact since April 1997 that the Corporation did not follow the proper legislative procedure when making the 1988 Bylaws, members consider that the Administration and the Corporation should not have taken nearly six years to take remedial action. Members are of the view that the Administration should be held responsible for such a delay.

14. The Administration admits that a fairly long time has been taken in drafting the 2002 Bylaw. The Administration explains that since new amusement games and facilities were installed in the Park, the Corporation has amended the Bylaws continuously and the Administration wishes to table the most updated version in a one-off exercise for LegCo's scrutiny.

15. Members hold the view that the drafting of the 2002 Bylaw should have been expedited. They are of the view that the Administration should be responsible for reminding the relevant statutory bodies to follow the proper procedures and should bear some responsibility for the 1988 Bylaw not being tabled at LegCo. To prevent similar incidents from occurring, the Subcommittee recommends that the House Committee should relay the concern of Subcommittee to the Director of Administration and request that Policy Bureaux should -

- (a) ensure that all the statutory organizations within their purview should follow the proper legislative procedure in the making of bylaws and other legislative instruments; and
- (b) take remedial action once the Bureau concerned becomes aware of any non-compliance with the proper legislative procedure.

Members' concerns and queries about the provisions of the 2002 Bylaw

Conduct of the public

16. Section 5 of the 2002 Bylaw governs conduct of the public in the Park and prohibits a person from doing certain acts in the Park e.g. putting his feet on or lying down on a seat or bench and spitting in an unhygienic manner. Hon James TO suggests that a "reasonable excuse" clause should be included in section 5 to cater for emergency situations. Hon Mrs Selina CHOW expresses doubts as to whether it is appropriate to do so across the board. She points out that for example, section 5(3)(o) prohibits a person from failing to take his turn in the queue and she fails to see why a person would have reasonable excuse to do so. Hon Mrs Selina CHOW opines that the management of the Corporation should be given the power to prohibit visitors in the Park from doing certain acts in order to maintain the order in the Park.

17. At members' suggestion, representatives of the Corporation agree to review the acts prohibited under the provisions in section 5 of the 2002 Bylaw, and consider to incorporate a "reasonable excuse" clause in the appropriate provisions.

18. Under section 5(3)(f) of the 2002 Bylaw, a person is prohibited from bringing any food or drink into the Park without authority granted by the

Corporation. Representatives of the Corporation inform the Subcommittee that the provision does provide for permission to be given and under appropriate circumstances, permission will be given by the Corporation to visitors to bring food and beverages into the Park to cater for specific needs and diets due to, say, health reasons.

19. From the information provided by the Corporation, members note that it is the policy of Universal Studio that outside food is not permitted inside the park with the exception of bottle water, fruit and baby food. Members are of the view that it is unreasonable that a person is required to seek the permission of the Corporation for bringing baby food inside the Park for feeding purposes. Representatives of the Corporation agree to exclude baby food from the regulation of section 5(3)(f) of the 2002 Bylaw.

20. Under section 5(3)(k) of the 2002 Bylaw, a person is prohibited from using a television receiver in the Park without authority granted by the Corporation.

21. Hon James TO points out that a radio may contain a television receiver. While he appreciates the need to prohibit a person from bringing a television into the Park as it may cause obstruction, the provision should be reviewed. Hon Henry WU points out that prohibition of using a television receiver may be due to technical reasons. He suggests that the Corporation should review the provision in the light of technical needs for prohibiting such use. Representatives of the Corporation agree to review the provision.

22. Under section 5(3)(m) of the 2002 Bylaw, a person is prohibited from straying from a path provided for pedestrian use in the Park without authority granted by the Corporation. Representatives of the Corporation explain that paths designated for pedestrian use in the Park are clearly demarcated by fences and barriers and signage has been put up in the Park to prevent visitors from straying into prohibited areas, which are often operational or storage areas and/or areas with steep gradient or slippery surfaces.

23. Hon Mrs Selina CHOW opines that the restriction imposed by the provision is too wide. She considers that the provision does not reflect accurately the intention of the Corporation to prohibit entry of visitors to certain restricted areas for safety or other reasons. Representatives of the Corporation agree to amend section 5(3)(m) of the 2002 Bylaw. Members also stress that the Corporation must ensure that adequate signage warning visitors that trespassing into prohibited areas is liable to prosecution is displayed prominently in those areas.

24. Under section 5(7)(k) of the 2002 Bylaw, a person is prohibited from delivering a public speech, public lecture or public sermon or conducting a public prayer in the Park without the prior written approval of the Corporation.

Representatives of the Corporation inform the Subcommittee that there are past cases where permission was granted to visitors to pray in a designated area.

25. Hon James TO is of the view that visitors should be allowed to conduct public prayer in the Park, and it may not be necessary to require visitors to pray in a designated area. Representatives of the Corporation agree to review the provision.

Photography

26. Under section 9(2) of the 2002 Bylaw, if a person takes a photograph or makes a video or cinematograph recording in the Park and an attendant of the Park reasonably believes that the photograph, video or cinematograph recording may have been taken or made with a view to its sale, publication or public exhibition, the person shall on request by the attendant surrender the relevant film, video cassette, computer diskette or other similar storage medium.

27. Representatives of the Corporation explain that prior permission should be sought from the Corporation for commercial photography in the Park or photography causing any inconvenience to other visitors or disturbance in the Park. Hon James TO considers that visitors should be allowed to take photos if they do not cause any inconvenience to other visitors or disturbance to order in the Park, and visitors should also be allowed to exhibit the photos if they are not for gain. Representatives of the Corporation have agreed to consider amending the provision to prohibit photography for selling or publishing for gain only.

Age

28. Under section 13(2) of the 2002 Bylaw, a person in the Park who has attained 15 years of age and who fails to produce proof of his age upon the request of an attendant of the Park commits an offence. Representatives of the Corporation explain that according to the policies of the Park, a child should not be allowed to enter the Park if the child is not accompanied by a person who has attained 15 years of age.

29. Hon James TO considers the provision too harsh. He suggests that the Corporation can request a person who fails to produce proof of his age to leave the Park if an attendant of the Park suspects that that person does not meet the age requirement instead of holding that person liable for prosecution. Representatives of the Corporation have agreed to review the provision.

Contravention and enforcement

30. Under section 14(5)(a) of the 2002 Bylaw, if an attendant of the Park reasonably suspects that a person has committed an offence under the Bylaw, the attendant may detain the person until the person is delivered into the custody of a police officer to be dealt with according to the law.

31. Hon James TO points out that a police officer is not empowered under the Police Force Ordinance (Cap. 232) to arrest a person if that person is being suspected of having committed an offence which is not punishable by imprisonment on first conviction. He queries why the power of an attendant of the Park is greater than that of a police officer.

32. Hon James TO and Hon Henry WU consider that the Bylaw and its enforcement should not be harsher than other laws or regulations. They opine that visitors who contravene the Bylaw for the first time should be given a warning instead of being subject to prosecution.

Opening the door of a cable car

33. Section 22(5) of the 2002 Bylaw prohibits a person from opening, closing or interfering with the door of a cable car without authority granted by the Corporation. Hon James TO considers that it may be necessary to include a “reasonable excuse” clause to cater for emergency situations e.g. in case of a fire inside the cable car; hence a person inside the cable car needs to open the door of a cable car without authority granted by the Corporation.

34. Representatives of the Corporation inform the Subcommittee that the cable car is made of fire retardant material and material which can withstand high temperature, which therefore minimize the risk of there being a fire. Furthermore, according to the code of practice issued by the Electrical and Mechanical Services Department, the cable car should not be opened by visitors from inside the carriage except by attendants of the Park who are trained to undertake such task. Representatives of the Corporation have also pointed out that the provision is included in the 2002 Bylaw purely for safety considerations.

35. Representatives of the Corporation further advise that even in the emergency cases, under the emergency procedures of the Park, a visitor should not open the door of a cable car because it is solely the responsibility of the rescuer or an attendant to do so. They explain that the door of a cable car will open automatically when the car arrives at the terminal. In the case where a cable car is suspended outside the terminal, the rescuer or an attendant would utilize emergency equipment to reach the cable car and open the door.

36. Hon James TO queries whether an absolute prohibition is necessary. He is of the view that as contravention of the provision would be a criminal offence, the provision should cater for every possible situation. Hon Mrs Selina CHOW, however, holds a different view. She has expressed reservations about the need to include a “reasonable excuse” clause because it may cause unnecessary arguments. She also could not anticipate that prosecution would be initiated against a person who has opened the door of a cable car in case of emergency without the authority of the Corporation. Hon Mrs Selina CHOW considers that safety considerations should outweigh the need to cater for extreme situations.

37. Hon James TO points out that he would not object to the provision as presently drafted if there is proof that such a “reasonable excuse” defence is available under common law, and it would not be an offence if similar provision is breached under emergency situations.

38. Representatives of the Corporation agrees to review the provision in the light of members’ views.

39. Members have requested the Corporation to review provisions of the 2002 Bylaw in order to strike a balance between maintaining good management of the Park and avoiding imposing unnecessary restrictions on its visitors. Members have not raised queries on the other provisions of the 2002 Bylaw.

Drafting amendments to the 2002 Bylaw

40. Members note that in response to the Legal Service Division’s comments on certain drafting issues, the Administration has agreed to make the following amendments to the 2002 Bylaw -

- (a) deleting the word “other” in the English text of section 11(3)(b);
- (b) amending the Chinese text of the maximum capacity of ferris wheel in the Schedule to the 2002 Bylaw as “106 名乘客(每一普通吊船不多於 6 名乘客;每一供傷殘人士使用的吊船則不多於 4 名乘客)”; and
- (c) amending section 14(1) to read “If an attendant reasonably suspects that a person in Ocean Park has contravened any provision of this Bylaw, the attendant may, on advising the person of the act or omission which constitutes the suspected contravention, request that person to produce proof of his identity and his true address.”.

Members support these amendments.

Way forward

41. Members note that the scrutiny period of the 2002 Bylaw has already been extended by resolution of the Council from 12 February 2003 to 5 March 2003. However, as the Financial Secretary is scheduled to present the Budget at the Council meeting on 5 March 2003, ordinary Council business will not normally be transacted at that meeting. As a result, any motion to amend the 2002 Bylaw would have to be moved at the Council meeting on 26 February and the deadline for giving notice of amendments for that meeting is 19 February 2003.

42. Representatives of the Corporation inform the Subcommittee that the Corporation would review the relevant provisions in light of members' views and concerns, but approval by the Board of the Corporation is required for making any amendments to the Corporation's bylaws. The Corporation therefore needs time before it can revert to the Subcommittee on the decision of its Board through the Administration.

43. In view of the technical and procedural reasons described in paragraphs 41 and 42 above, members agree that as time is required to further consider the issues and concerns, the 2002 Bylaw should be repealed first. Members further recommend that after the 2002 Bylaw has been repealed, the House Committee should form a subcommittee to study the new Bylaw to be gazetted.

44. Members stress that the decision of the Subcommittee to repeal the 2002 Bylaw is not made because the Bylaw is problematic or is badly drafted. The decision has been made purely on technical and procedural grounds as more time is required for the scrutiny of the Bylaw. Representatives of the Corporation have stressed to the Subcommittee that until the 2002 Bylaw is enacted, the conduct of visitors in the Park is still governed by the 1988 Bylaws which have been incorporated into the contract between the Park and visitors to the Park made when admission tickets are purchased.

Recommendation

45. The Subcommittee recommends that -

- (a) the Chairman of the Subcommittee, Hon James TO, should move a motion on 26 February 2003 to repeal the 2002 Bylaw; and
- (b) a subcommittee should be formed to study the new Bylaw to be gazetted after the 2002 Bylaw has been repealed; and

- (c) the House Committee should relay the concern of Subcommittee to the Director of Administration and request that Policy bureaux should ensure that all the statutory organizations within their purview should follow the proper legislative procedure in the making of bylaws and other legislative instruments, and should take remedial action once the Bureau concerned becomes aware of any non-compliance with the proper legislative procedure.

Advice sought

46. Members are invited to support the recommendations of the Subcommittee in paragraph 45 above.

Council Business Division 2
Legislative Council Secretariat
25 February 2003

Subcommittee on Ocean Park Bylaw

Membership List

Chairman	Hon James TO Kun-sun
Members	Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon Henry WU King-cheong, BBS, JP Hon LEUNG Fu-wah, MH, JP (Total : 4 Members)
Clerk	Miss Flora TAI Yin-ping
Legal Adviser	Miss Monna LAI Shun-wo
Date	18 February 2003