

立法會
Legislative Council

LC Paper No. CB(2)69/12-13(03)

Ref : CB2/SS/1/12

**Subcommittee on
Public Health and Municipal Services Ordinance (Public Pleasure
Grounds) (Amendment of Fourth Schedule) (No.2) Order 2012**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper summarizes past discussion by the Panel on Home Affairs ("the Panel") and the Joint Subcommittee to Monitor the Implementation of the West Kowloon Cultural District Project ("the Joint Subcommittee") on issues relating to the use of public open space.

Background

2. According to the Administration, in respect of public open space, the Leisure and Cultural Services Department ("LCSD") manages over 1 500 parks and playgrounds of varying sizes providing leisure and recreational facilities such as gardens, walking and jogging trails, football pitches and basketball courts.

3. The Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO") and the Pleasure Grounds Regulation (Cap. 132BC) ("PGR") made thereunder provide LCSD with the statutory authority to manage the public pleasure grounds listed in the Fourth Schedule to PHMSO ("Fourth Schedule"). PGR contains provisions relating to the use of public open space for conducting leisure and recreational activities by members of the public. In particular, PGR provides that in any pleasure ground -

- (a) no person shall walk, run, stand, sit or lie on any grass, turf or other places where notice to keep off such grass, turf or other places is exhibited (section 9(a));

- (b) flying of kites, model aircraft, balloons or other device may be restricted or prohibited by the Director of Leisure and Cultural Services ("DLCS") by notice conspicuously displayed (section 17);
- (c) melting or burning wax or sprinkling or pouring liquid onto hot wax in such a manner as to cause or be likely to cause a risk of injury to any person or damage to any property is prohibited (section 23A); and
- (d) no person shall play any musical instrument, operate any radio or gramophone, or sing to the annoyance of any other person, unless the playing of the instrument, the operation of the radio or gramophone, or the singing of any song is in accordance with a written permission granted by DLCS (section 25).

West Kowloon Cultural District Authority ("WKCD")

4. WKCD is established under the West Kowloon Cultural District Authority Ordinance (Cap. 601) ("the WKCD Ordinance"). Under section 4(1)(c) of the WKCD Ordinance, WKCD is responsible, either alone or jointly or by agreement with any other person, for providing, operating, managing, maintaining or otherwise dealing with arts and cultural facilities, related facilities or ancillary facilities. Section 4(2) of the WKCD Ordinance requires WKCD to perform its functions in ways which aim to achieve a number of objectives, including, amongst others, providing or facilitating the provision of free and accessible open space within the leased area to the general public.

5. Pursuant to section 37(1) of the WKCD Ordinance, WKCD is empowered to make bylaws for one or more of the following purposes -

- (a) for the regulation, operation or management of arts and cultural facilities, related facilities or ancillary facilities; and
- (b) for the conduct of all persons within any premises, buildings, structures, facilities or land (including public places) which the Authority holds or manages, whether within or outside the leased area.

Section 37(2)(c) of the WKCD Ordinance provides that all bylaws made by WKCD are subject to the approval of the Legislative Council ("LegCo").

Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No.2) Order 2012 ("the Order")

6. The Order was made by DLCS under section 106 of PHMSO. Under this section, DLCS in her capacity as the Authority may, from time to time, by order set aside places for use as public pleasure grounds, and may by order amend, or add to, or delete from the Fourth Schedule.

7. The Order states that the West Kowloon Waterfront Promenade ("the venue") ceases to be set aside for use as a public pleasure ground, and amends the Fourth Schedule to PHMSO by deleting the reference to the venue. According to the LegCo Brief issued by LCSD, the venue is no longer required to be used as public pleasure ground and will be handed over to WKCDA for use and management subject to the completion of relevant procedures.

8. The Order was published in the Gazette on 6 July 2012 and came into operation on the same date.

Members' views and concerns

9. While the Panel has not discussed specifically the Order, the Panel and the Joint Subcommittee had discussed issues relating to the use of public open space by members of the public to conduct leisure and recreational activities. Members' major views and concerns are summarized below.

Use of public open space in the West Kowloon Cultural District ("WKCD")

10. There was a view that the use of public open space in Hong Kong had all along been subject to various regulations, which were not conducive to arts and cultural activities. For instance, members of the public were not allowed to lie on the grass, sing and play musical instruments in public parks. Concern was raised about how the public open space in WKCD would be managed. WKCDA was called on to be aware of the regulations relating to the use of public open space and strive to protect the freedom of expression in WKCD.

11. WKCDA assured members that while there were always some limits to the use of any big venues or public open space to ensure safety, etc., a main task for WKCDA was to provide public open space in

WKCD and make it accessible to all Hong Kong people. They would be allowed to enjoy freely on the grass and street performances would be encouraged in WKCD. Members were also advised by the Administration that the Government was very supportive of the development of arts and culture in public open space. The public open space in WKCD would be for public use and the Government would not take it for other purposes.

Street performances

12. Members in general expressed support for street performances, which should be welcomed by tourists and local people. Nevertheless, some members were concerned about the availability of venues for street performances in Hong Kong. They called on the Administration to adopt a proactive approach to promote street performances and expedite the provision of more public open space for the staging of such performances, which was conducive to the vibrancy of the community.

13. According to the Administration, there was no legislation prohibiting street performances in Hong Kong at present. It was the Government's policy to bring the arts to the public and street arts performances would be welcomed so long as they did not cause nuisance to the public. LCSD launched the Open Stage Trial Scheme between July 2010 and June 2011. Under the Scheme, specific zones in three locations, namely the Hong Kong Cultural Centre piazza ("HKCC"), the Shatin Town Hall plaza ("STTH") and the Kwai Tsing Theatre plaza ("KTT"), were designated as places for public performances by individuals or organizations at no charge. Following a review of the pilot scheme and in view of the relatively low level of patronage at HKCC and KTT, LCSD decided that the scheme would only continue at STTH on a long-term basis.

14. A view was expressed that from the perspective of maintaining public order and protecting public safety, performances conducted on streets and in other public spaces (e.g. parks) could be regulated by way of imposing conditions on the performing venues or the performances to be conducted. Given the nomadic nature of street performers, it might be more appropriate and effective to regulate street performances, especially those conducted in crowded areas, by a licensing regime. The licensees might be required to stage their performances at a specific time and location within a designated area and the duration of their performances might not exceed a certain limit. It was suggested that the Administration might make reference to the Taipei City Government's licensing scheme for street performers.

15. The Administration responded that introducing a licensing requirement for street performances would have the effect that those persons who had not obtained a licence would be forbidden to conduct street performances. This would be a drastic change from the present arrangement in Hong Kong and had to be considered carefully having regard to public acceptability and other relevant issues.

Relevant papers

16. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
22 October 2012

Relevant papers on the Use of Public Open Space

Meeting	Date of meeting	Paper
Joint Subcommittee to Monitor the Implementation of the West Kowloon District Project	11.7.2011 (Item I(c))	Agenda Minutes
Joint Subcommittee to Monitor the Implementation of the West Kowloon District Project	26.8.2011 (Item I)	Agenda Minutes
Panel on Home Affairs	13.10.2011	Minutes
Panel on Home Affairs	13.1.2012 (Item IV)	Agenda Minutes

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 22 October 2012