

For information

**LegCo Panel on Food Safety and Environmental Hygiene
List of Follow-up Actions**

PURPOSE

This paper provides, for the Panel's reference, supplementary information furnished by the Administration on matters raised in the list of follow-up actions recorded in LC Paper No. CB(2)1284/12-13(02).

BACKGROUND

2. At its meetings on 11 December 2012 and 21 January 2013, the Panel requested the Administration to provide supplementary information on the following areas respectively:

- (a) the allocation mechanism for public niches and the reasons for adopting such a mechanism (item 3 of the list of follow-up actions); and
- (b) enforcement actions against unauthorised private columbaria and the assistance that is given to affected families in handling displaced ashes (item 8 of the list of follow-up actions).

Item 3 of the list of follow-up actions

Allocation mechanism for public niches

3. Under the Cremation and Gardens of Remembrance Regulation (Cap. 132M), the ashes of the following deceased person may be deposited in a Government columbarium -

- (a) the person is a Hong Kong resident at the time of his death and his remains were cremated in a Government crematorium within three months after his death; or

- (b) the person is a Hong Kong resident for at least 10 years during the period of 20 years immediately preceding his death and his remains were cremated outside Hong Kong.

Arrangement for allocation of new public niches

Before 2001 - First-come-first-served

4. During this period, the supply of new niches exceeded demand. Within one month of the approval of the application, the applicant was required to produce the approval letter and pay the required fee, and the Government would then allocate a new niche in the order of a running serial number on a first-come-first-served basis.

From 2001 to 2006 - Random allocation

5. For corruption prevention considerations, the Independent Commission against Corruption (ICAC) recommended that on a daily basis, for the next available lot of new niches (say the next 30), an applicant would be allocated a serial number randomly through computer balloting.

6. The Food and Environmental Hygiene Department (FEHD) accepted the recommendation and implemented the new allocation system for niches in Cape Collinson Columbarium in 2001. The allocation of 14 450 new niches were completed in 2006. At that time, the supply of new niches was still larger than demand.

From 2006 to 2009 - Computer balloting in one go

7. In 2006, ICAC recommended that all eligible applications should be allocated with a priority number generated by computer on a random basis. Applicants would then be invited to select niches of their choice according to their priority numbers. The remaining niches could be allocated either on a first-come-first-served basis or by balloting. ICAC also recommended that the computer balloting exercise should be conducted openly to enhance transparency.

8. FEHD accepted the recommendation, and adopted this in the allocation of new niches from 2006 to 2009. In 2009, FEHD offered 3 374 new niches at Kwai Chung Columbarium and 18 501 new niches at Diamond Hill Columbaria (DHC) (a new building) for allocation. The number of applications received in these two exercises were 8 539 and 22 097 respectively. All applicants were eventually invited to select a niche by the end of the DHC allocation exercise, because some applicants had withdrawn

their applications during the allocation process. In other words, there was no unsuccessful application for new niches by the time the allocation exercise at DHC was completed.

In 2012

9. A new public columbarium at Kiu Tau Road of Wo Hop Shek Cemetery, providing 43 710 new niches, and the DHC extension, providing 1 540 new niches, were completed in 2012. FEHD decided to continue to adopt the allocation arrangement in 2009 in allocating these new niches, having regard to the following considerations:

- (a) there was no waiting list in the last allocation exercise at DHC held in 2009 because all applicants were eventually invited to select a niche;
- (b) the allocation methodology was recommended by ICAC, which is fair and transparent; and
- (c) in view of the excess demand for public niches in recent years, the imposition of any other conditions on top of the basic legal requirements (as mentioned in paragraph 3 above) or the setting of other allocation priorities and criteria may lead to disputes among the public and stakeholders. Consensus would be difficult to achieve.

Owing to the limited number of public niches and the uncertainty associated with the future supply of new niches, there is perhaps no one single allocation mechanism which could satisfy all demands.

10. A three-phase niche allocation exercise commenced in September 2012. Phase I allocation, which involved 10 742 new niches and 24 528 applications, was completed on 8 May 2013. Out of the 10 742 new niches, 8 977 were allocated. Phase II allocation, involving 15 562 new niches, commenced in June 2013 and will be completed in May 2014. FEHD plans to commence Phase III allocation in July 2014 tentatively for completion in late 2015. Any niches left unallocated in the first two phases will be carried forward for allocation during Phase III, so that these could be made available for allocation by balloting.

11. FEHD conducted an opinion survey during the Phase I allocation. The results of the survey indicate that over 80% of the respondents, including unsuccessful applicants, supported the computer balloting arrangement.

Arrangement for the allocation of used public niches

12. The considerations of individuals who choose to apply for new and used niches are different. In most cases, individuals who apply for used niches have in mind such personal reasons as location, feng shui preference or the intention to move the ashes of deceased relatives from different columbaria into the same columbarium, etc. For used public niches, FEHD has all along adopted a waiting list system and allocates used niches in the respective public columbaria on a first-come-first-served basis.

In the past five years, a total of about 1 870 used niches were surrendered to FEHD. The waiting time for such niches ranges from 2 to 5 years. Currently, there are some 22 000 applications on the waiting list.

Conclusion

13. FEHD will continue to monitor the situation and review the propriety of the allocation arrangements as necessary.

Item 8 of the list of follow-up actions

Enforcement actions against unauthorised private columbaria

14. In taking actions against any unauthorised private columbaria contravening the planned use, the land lease or buildings requirements, the relevant departments will exercise the powers conferred upon them by the land lease, the Town Planning Ordinance (Cap. 131) and the Buildings Ordinance (Cap. 123), in accordance with the established procedures.

Town planning

15. The Town Planning Ordinance empowers the Planning Authority (i.e. the Director of Planning) to undertake enforcement actions against unauthorised developments within the Development Permission Areas (DPAs), i.e. areas in the rural New Territories. The Planning Authority may issue Enforcement Notices, requiring the parties concerned to discontinue the unauthorised developments. For urban areas and new towns which are not designated as DPAs, the enforcement actions against the relevant land use are mainly handled by virtue of land lease conditions (if applicable), building plans and various licence systems (if applicable).

Land leases/Land Control

16. Given the large areas and extensive uses of land in Hong Kong, it is not possible for the Lands Department (LandsD) and its District Lands Offices (DLO) to conduct regular inspection of all land. However, upon receipt of a complaint or a referral in respect of land use, the DLO concerned will deploy its staff to conduct on-site inspections. Legal advice would be sought in light of the actual circumstances and follow-up action would be taken at different stages as appropriate.

17. For confirmed cases of illegal occupation of unleased land (Government land) for columbarium use, the DLO concerned will issue a notice under section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28), requiring the occupation of the land to cease before the date as specified in the notice. If the illegal occupation of land persists upon the expiry of the specified date, or that the person has not applied for regularisation or is not successful in his regularisation application but continues with the illegal occupation of the land, the DLO concerned would, after seeking legal advice, consider taking further enforcement actions, including prosecution. For the operation of private columbaria on leased land (private land) which is constituting a contravention of the lease conditions, the LandsD would take lease enforcement actions such as issuance of warning letters, and eventual re-entering the concerned lot is not precluded.

18. Where a landowner applies for regularising a breach of lease conditions and / or the illegal occupation of Government land, the Lands Department would normally seek advice from the relevant policy Bureaux/Government Departments (including the Planning Department and the relevant District Officers) before considering the application according to the specific circumstances of each case. If the landowner submits a corresponding planning application to the Town Planning Board at the same time, the LandsD would normally consider the application for regularisation, after the outcome of the planning applications is available. If the application is approved, the landowner would have to comply with the conditions of regularisation, including inter alia the payment of a land premium. Besides, the landowners would be required to prudently consider ceasing all forms of publicity and promotional activities in relation to columbaria use before addressing with the LandsD, the issues arising from the breach of lease conditions. He would also be required to make reasonable arrangements for those who have purchased niches.

Building safety

19. On construction, those columbaria which are in breach of the Buildings Ordinance or its subsidiary legislation would be regarded as unauthorised building works (UBWs). The Buildings Department (BD) would, in accordance with the existing enforcement policy against UBWs, give priority to taking enforcement actions against items constituting obvious or imminent danger to life or property, newly constructed items and items that constitute a serious hazard or serious environmental nuisance. Besides, the BD has revised since April 2011 its enforcement policy against UBWs to extend the coverage of actionable UBWs to include all UBWs on the exterior of buildings, such as those on roof-tops and podiums, as well as those in the yards and back-lanes of buildings, irrespective of their risks to public safety or whether they are newly constructed.

Conclusion

20. All relevant departments would continue to step up enforcement actions. The Administration would also report to the Legislative Council the progress of enforcement actions against individual cases from time to time.

Assistance to the public in handling ashes affected by enforcement actions

21. At present, for the convenience of the public, ashes may be stored temporarily in the relevant crematoria free of charge in the first two months following cremation of the deceased. If necessary, ashes may also be stored at the temporary storage facilities in the Kwai Chung Crematorium at a monthly fee of \$80, where paying respect to the deceased is not allowed. The public may apply for extension of temporary storage upon expiry of the said period.

22. The Administration consulted the Panel on the proposed Private Columbaria Bill on 21 December 2012. We propose to introduce a statutory licensing scheme for private columbaria. Under the proposal, columbaria operators have the responsibility to ensure the proper handling of interred ashes before cessation of business. It would be an offence for any person who fails to handle interred ashes in his/her columbarium properly before cessation of business. Anyone who without reasonable excuse contravenes the provisions is liable on conviction to a fine and imprisonment.

ADVICE SOUGHT

23. Members are invited to note the above information.

**Food and Health Bureau
Food and Environmental Hygiene Department
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