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Paper for the House Committee meeting

**Report of the Subcommittee on
Proposed Resolution under Section 37 of the West Kowloon
Cultural District Authority Ordinance (Cap. 601)**

Purpose

This paper reports on the deliberations of the Subcommittee on Proposed Resolution under Section 37 of the West Kowloon Cultural District Authority Ordinance (Cap. 601) ("the Subcommittee").

Background

2. The West Kowloon Cultural District ("WKCD") covers an area of about 40 hectares with the provision of 23 hectares of public open space ("POS") including the Park. Under section 4(1)(c) of the West Kowloon Cultural District Authority Ordinance (Cap. 601) ("WKCDAO"), the West Kowloon Cultural District Authority ("WKCDA") is responsible for providing (including planning, designing and constructing), operating, managing, maintaining or otherwise dealing with arts and cultural facilities and related facilities including POS within WKCD. According to the Legislative Council ("LegCo") Brief issued by the Home Affairs Bureau ("HAB") (File Ref.: SF(72) to HABCS CR 7/1/99/1/1) ("the LegCo Brief"), WKCDA endeavours to manage POS in WKCD with a light hand and to provide a welcoming environment for the pursuit of a wide range of cultural and leisure activities. To facilitate the effective management of POS in WKCD for the safe and enjoyable use of all, WKCDA has made the West Kowloon Cultural District (Public Open Spaces) Bylaw ("the proposed Bylaw") for the approval of LegCo.

3. Section 37(1) of WKCDAO empowers WKCDA to make bylaws for one or more of the following purposes:

- (a) the regulation, operation or management of arts and cultural facilities, related facilities or ancillary facilities; and
- (b) 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 WKCDAO provides that all bylaws made by WKCDA are subject to the approval of LegCo.

The proposed resolution

4. The Secretary for Home Affairs ("SHA") has given notice to move a motion (i.e. the proposed resolution) at the Council meeting of 16 March 2016 to seek LegCo's approval of the proposed Bylaw made by WKCDA under section 37(1) of WKCDAO. The proposed Bylaw seeks to provide for the management, operation and use of POS within WKCD¹ in order to ensure public safety, order and health; protect the environment; ensure that enjoyment of POS by some visitors does not unduly disturb others; and allow the conduct of outdoor events from time to time. It empowers WKCDA and its authorized persons to give permission for POS users to perform an act or activity which is otherwise prohibited under the proposed Bylaw and to enforce the proposed Bylaw. Prosecution of criminal offences under the proposed Bylaw may be brought in the name of WKCDA. The proposed Bylaw, if approved by LegCo, will come into operation on the date of publication of the Gazette.

The Subcommittee

5. At the House Committee meeting on 26 February 2016, Members agreed to form a subcommittee to study the proposed resolution. The membership list of the Subcommittee is in **Appendix I**. At the request of the House Committee, SHA withdrew his notice for moving the proposed resolution at the Council meeting of 16 March 2016 to allow time for the Subcommittee to study the proposed resolution in detail.

¹ An indicative plan of the POS concerned is at Annex 2 of the LegCo Brief.

6. Under the chairmanship of Hon Christopher CHUNG, the Subcommittee has held four meetings with the Administration and WKCDA, and also invited views from the public. A list of organizations which have made written submissions to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

Preamble to the proposed Bylaw

7. The Subcommittee notes that to ensure consistent and effective management of POS, WKCDA plans to apply the proposed Bylaw to the Park as well as other POS in WKCD including Artist Square, M+ podium, Xiqu Square, the Avenue and the waterfront promenade. According to WKCDA, the proposed Bylaw has been drafted with regard to the guiding principle that use of the Park in POS should be open and accessible wherever possible, the mission for the Park to inspire, promote and encourage cultural pursuits for all, the management practices adopted by local and overseas parks and cultural areas, with discretion for WKCDA to execute the proposed Bylaw with flexibility to cater for diverse park activities.

8. Some members including Mr Alan LEONG, Ms Cyd HO and Mr WU Chi-wai, however, hold a strong view that a provision similar to section 4(2) of WKCDAO² should be included in the proposed Bylaw to spell out the abovementioned guiding principle, and to require WKCDA to enforce the proposed Bylaw in ways which aim to achieve the mission for POS to inspire,

² Under section 4(2) of WKCDA, WKCDA shall perform its functions under subsection (1) in ways which aim to achieve the following objectives - (a) to facilitate the long-term development of Hong Kong as an international arts and cultural metropolis; (b) to uphold and encourage freedom of artistic expression and creativity; (c) to enhance and promote excellence, innovation, creativity and diversity in arts and culture; (d) to enhance the appreciation of a diverse and pluralistic range of the arts; (e) to develop new and experimental works in arts and culture; (f) to cultivate and nurture local talents in the arts (including local artists), and local arts groups and arts-related personnel; (g) to encourage wider participation by the local community in arts and culture; (h) to promote and provide arts education to the local community; (i) to facilitate the development of cultural and creative industries; (j) to facilitate and enhance cultural exchange and cooperation between the Mainland of China, Hong Kong and any other place; (k) to facilitate and enhance cooperation between any government or non-government body or organization and providers of the arts, within and outside Hong Kong; (l) to encourage community, commercial and corporate support and sponsorship of arts and culture; (m) to provide or facilitate the provision of free and accessible open space within the leased area to the general public; and (n) to strengthen the position of Hong Kong as a tourist destination.

promote and encourage cultural pursuits for all. WKCDA has advised that during the drafting of the proposed Bylaw, it originally proposed to insert a vision statement in the enacting formula³ (located immediately after the title heading) of the proposed Bylaw. However, according to WKCDA's understanding of the advice of the Department of Justice ("DoJ"), such approach was not in line with the prevailing drafting convention and there was no need to include such a mission statement in the proposed Bylaw as it was already contained in WKCDAO. In the light of this, WKCDA has incorporated the relevant information into the guidelines for the use of POS in WKCD.

9. At the suggestion of Mr Alan LEONG, the Subcommittee has agreed to invite the representatives of DoJ to attend the meeting of the Subcommittee to give its view on whether it is feasible to include the vision and mission for WKCD POS in the proposed Bylaw. The Subcommittee appreciates the attendance of the Law Draftsman of DOJ at its meeting on 18 April 2016 and notes the clarifications made by the Law Draftsman on the role of the Law Drafting Division ("LDD") of DoJ in vetting legislation made by non-Government entities⁴ and its advice given to HAB on the proposed Bylaw. According to the Law Draftsman, LDD of DoJ vetted the proposed format of the proposed Bylaw for consistency with the standard format of Hong Kong legislation and for presentational matters. One of the issues identified was that the enacting formula included extraneous text relating to the purpose of the proposed Bylaw. LDD advised HAB that (a) inclusion of the extraneous text mirroring section 4(2)(m) of WKCDAO was inappropriate as an enacting formula contained standard wording merely setting out the enabling provision in the empowering Ordinance; (b) section 4(2) of WKCDAO appeared to set out the mission or vision; and (c) if WKCDA wished to include a mission or vision in the proposed Bylaw, this should be done elsewhere.

10. At the same meeting of the Subcommittee, WKCDA informed the Subcommittee that as it was not usual to incorporate vision and mission or purpose statements as substantive provisions in subsidiary legislation, WKCDA proposed to incorporate the vision and mission statement as a preamble to the proposed Bylaw. According to the advice of the Law

³ The enacting formula is the way of announcing the authority under which the law is enacted. For the proposed Bylaw, the enacting formula is "(Made by the West Kowloon Cultural District Authority under section 37 of the West Kowloon Cultural District Authority Ordinance (Cap. 601) subject to the approval of the Legislative Council)".

⁴ For the role of DoJ in relation to legislation proposed by non-Government entities, please refer to the letter of the Law Draftsman to the Subcommittee dated 11 April 2016 (LC Paper No. CB(2)1263/15-16(02)).

Draftsman, while the use of preambles in subsidiary legislation was not common, there were precedents in Hong Kong.

11. While welcoming WKCDA's current proposal, Mr Alan LEONG and Mr WU Chi-wai have suggested that WKCDA should consider providing expressly in the preamble to the proposed Bylaw that WKCDA should give sufficient consideration to, and seek to achieve, the vision and mission for WKCD POS as set out in the preamble in enforcing the proposed Bylaw. WKCDA has initially responded that as it is obliged to comply with both WKCDAO and the proposed Bylaw once it is enacted, it does not see any need to state explicitly in the proposed Bylaw the requirement for WKCDA to have regard to the vision and mission for WKCD POS in implementing the proposed Bylaw.

12. On members' suggestion, the Legal Adviser to the Subcommittee has advised that from the drafting perspective, the preamble serves to provide background information on a piece of legislation and cannot be used to override the clear and unambiguous provisions of the legislation. In response to members' enquiry, the Law Draftsman has advised that while a preamble to a piece of legislation is of value in interpreting the provisions within the legislation, the extent to which the preamble governs the outcomes is ultimately for judicial interpretation. As WKCDAO will prevail over the proposed Bylaw, sections 4(1) and 4(2) of WKCDAO which set out the functions and objectives of WKCDA will be given predominant effect in interpreting matters relating to the enforcement and the scope of the proposed Bylaw.

13. Noting the advice of the Law Draftsman and the Legal Adviser to the Subcommittee, some members including the Chairman and Mr CHAN Chi-chuen have suggested that to address members' concern that the implementation of the proposed Bylaw should not unduly restrict public enjoyment of WKCD POS, WKCDA should state explicitly in the preamble to the proposed Bylaw that the vision and mission for WKCD POS are formulated in the light of section 4(2) of WKCDAO. After consideration, WKCDA has subsequently advised that it will state in the preamble of the proposed Bylaw that the vision and mission of WKCDA for POS in WKCD are formulated in the light of section 4(2)(m) of WKCDAO.

14. The Chairman has, however, pointed out that section 4(2)(m) of WKCDAO refers only to WKCDA's objective to provide or facilitate the provision of free and accessible open space within WKCD to the general public. In his view, it is more appropriate to state in the preamble that the

vision and mission for WKCD POS are formulated in the light of the whole section 4(2) of WKCDAO, which set out the various objectives that WKCDA aims to achieve in performing its functions. Having further considered members' view and suggestion, WKCDA has agreed to amend the relevant paragraph of the preamble to the proposed Bylaw to state clearly that the vision and mission of WKCDA for POS in WKCD are formulated in the light of section 4, and in particular section 4(2)(m), of WKCDAO.

Defence of reasonable excuse

15. In response to the enquiry of the Legal Adviser to the Subcommittee, WKCDA has advised that it considers it not necessary to provide a defence of reasonable excuse for the offences in the proposed Bylaw. According to WKCDA, in circumstances where there may be lawful excuses for contravention of the provisions of the proposed Bylaw, express provisions have been made in the proposed Bylaw to provide for such a defence (e.g. section 16(1) and (3)). In case there are good reasons which justify a departure from the requirements in the proposed Bylaw but are not expressly provided for in the proposed Bylaw, an authorized person may give written or oral permission to relax these requirements pursuant to section 4 of the proposed Bylaw. WKCDA has further advised that it has considered the Ocean Park Bylaw (Cap. 388B), the Kadoorie Farm and Botanic Garden Bylaw (Cap. 1156A) and the Pleasure Grounds Regulation (Cap. 132BC), which contain similar provisions relating to offences, and they do not provide a defence of reasonable excuse. WKCDA has stressed that in the event an offence under the proposed Bylaw has been committed, WKCDA will still have to consider whether it is in the public interest to prosecute the offender. If the offender has a reasonable excuse such that the public interest is not served to prosecute the offender, WKCDA will not do so.

16. Notwithstanding WKCDA's advice above, members consider that there is a need to provide a reasonable excuse defence as it will afford better protection to users of POS in WKCD. Members have pointed out that as members of the public may inadvertently contravene the relevant sections under the proposed Bylaw, they should have a right to raise a defence of reasonable excuse. In members' views, such a defence will enable the general public to have a better understanding of their right to defend and minimize potential disputes that may arise from the enforcement of the relevant requirements of the proposed Bylaw. Members also note the advice of the Legal Adviser to the Subcommittee that a defence of reasonable excuse has been provided for similar offences in the Kai Tak Cruise Terminal Bill

gazetted on 3 July 2015.⁵

17. After taking into account members' views, WKCDA has agreed to provide a defence of reasonable excuse by adding in the wording "without reasonable excuse" for all offences under the relevant sections of the proposed Bylaw (except section 15 on prohibition of dangerous goods and firearms, etc). The Subcommittee notes the view of WKCDA that it does not consider it necessary or appropriate to insert a defence of reasonable excuse in section 15(2) as it does not contemplate any reasonable excuses which can justify a breach of the requirements under section 15(1) of the proposed Bylaw by users of POS in WKCD.

Provisions of the proposed Bylaw

Section 3 – Authorization by the Authority and section 23 - Enforcement

18. Section 3 of the proposed Bylaw provides that WKCDA may authorize any of its officers or employees or any other person as it sees fit to perform the functions of an authorized person under this Bylaw and to enforce, or otherwise perform the functions relating to or with respect to, this Bylaw. Persons authorized by WKCDA are empowered under section 23(5) of the proposed Bylaw to use "reasonable force" to remove a person suspected to have contravened the proposed Bylaw from WKCD POS. Some members including Ms Cyd HO and Mr CHAN Chi-chuen have raised queries about what will be considered as "reasonable force" by WKCDA and whether any guidelines will be provided to the authorized persons on the use of "reasonable force".

19. WKCDA has advised that the authorized persons mainly include its employees who are responsible for the general management of POS in WKCD and provision of information to POS users (e.g. the Park Ambassadors), as well as a small number of security guards engaged through WKCDA's agents for the events held in POS. These authorized persons will be unarmed and in uniform and hence can be clearly identified by POS users. WKCDA has further advised that while its authorized persons will be instructed to seek the assistance of the Police as necessary and appropriate, there is a practical need for the authorized persons to be empowered under the proposed Bylaw to use "reasonable force" in situations where, for reasons of ensuring public safety or order, immediate action has to be taken to remove a person from WKCD POS. WKCDA has assured members that the use of force is to be avoided except

⁵ Please refer to clauses 7(4), (5), 8(6), 12(5), 16(4), 17(4), (5), 18(3) and 19(2) of the Kai Tak Cruise Terminal Bill.

when it is absolutely necessary. The authorized persons will be trained to de-escalate a situation through communication and discussion and to use minimum force to remove a person from POS where the situation warrants. Detailed guidelines and proper training on incident management, including the use of "reasonable force" in different situations, will be provided to the authorized persons. At the request of the Subcommittee, WKCDA has provided its guidelines on incident management for the reference of the Subcommittee.⁶

20. In response to Ms Cyd HO's suggestion, WKCDA has advised that there is no need to specify in section 3 of the proposed Bylaw the types of persons who will be given authorization by WKCDA and their functions. According to WKCDA, there will be different levels of authorization and personnel employed by WKCDA to work in POS will be given authorization for the implementation of the proposed Bylaw appropriate to their levels of engagement with members of the public in their day to day work, which will be reflected in their job descriptions and training.

Section 9 - Domestic animals

21. Under section 9(3), a person must not bring a domestic animal into POS unless the animal is at all times on a lead, carried in a proper cage or container, or otherwise under the control by other appropriate means of the person responsible for the animal. The Legal Adviser to the Subcommittee has asked who will be considered the person responsible for the animal and whether it refers to the person bringing the domestic animal into POS or the owner of the domestic animal or otherwise. As advised by WKCDA, it considers the person bringing the domestic animal into POS as the person responsible for the animal.

22. The Legal Adviser to the Subcommittee has also enquired with WKCDA about the meaning of "assistance animal" under section 9(8) of the proposed Bylaw and whether "assistance animal" as referred to in this section should be defined by making reference to the definition of "assistance animal" in legislation of other jurisdictions like USA and Australia. WKCDA has advised that the meaning of "assistance animal" under this section covers not only guide dogs, but also animals which are individually trained to do work or perform tasks for people with disabilities. As Hong Kong legislation currently does not have a similar provision which defines "assistance animal", WKCDA considers it inappropriate to set out a definition of "assistance

⁶ For WKCDA's incident management guidelines, please refer to Annex 1 to LC Paper No. CB(2)1263/15-16(03).

animal" in the proposed Bylaw in order to avoid pre-empting relevant authorities in Hong Kong in defining "assistance animal" in the laws of Hong Kong. Furthermore, WKCDA intends to adopt a flexible approach where it can decide whether an animal should be regarded as an "assistance animal" on a case by case basis. To facilitate the day-to-day management of POS, WKCDA will provide in its guidelines information on the animals that are being used as assistance animals in other jurisdictions.

Section 10 – Conduct of events

23. Section 10(1) provides that except with the written permission of WKCDA, a person must not conduct an event in POS. WKCDA has informed the Subcommittee that to facilitate the conduct of events in WKCD POS in a more dynamic and flexible manner, it considers it more appropriate not to prescribe specifically in the proposed Bylaw the events the conduct of which will or will not require the written permission of WKCDA. WKCDA has uploaded the draft guidelines on the hosting of outdoor events in WKCD POS onto its website for public information.

24. The Subcommittee has sought clarification on the definition of "events" the conduct of which will require the written permission of WKCDA. According to WKCDA, the essence of an event is that it is a performance, entertainment, activity or gathering organized for the purposes of the organizer to present and engage the audience for entertainment, education or any other purpose, regardless of whether the attendance by the public may be paid or not paid, or ticketed or not ticketed. For the purposes of the proposed Bylaw, an event is an activity of that kind which will occupy such amount of POS as may present members of the public who are not members of the audience some inconvenience or restrict their free access to the area concerned. In order to enable WKCDA to ensure public safety or order, the conduct of such event will require the written permission of WKCDA.

25. In response to members' enquiry, WKCDA has advised that the Places of Public Entertainment Ordinance (Cap. 172) ("PPEO") will apply to those events which require WKCDA or the organizers to restrict admission by closing part of POS, by ticketing or other means (e.g. by invitation only). PPEO will not apply to events where members of the public are free to attend without restriction or control of admission.

Section 11 – Commercial filming, photography and recording

26. The Subcommittee notes that a person carrying out filming, photography or any form of recording of a visual image or sound in POS for commercial purposes is required to obtain WKCDA's prior written permission. While there is no restriction on photo-taking activities in POS by individuals or amateur groups for weddings, professional wedding photographers seeking to use POS for photo shoots frequently will be required to register with and obtain a permit from WKCDA in advance.

Section 13 – Public conduct

27. Under section 13(1)(k), a person must not, in POS, without permission, fly a kite with a control string longer than 50 metres, any remotely controlled powered flying drone or model aircraft (whether fuelled by hydrocarbon or alcohol based fuels or powered by electricity), or any untethered ballon filled with heated air or lighter than air gases more than 10 metres above ground level. WKCDA has explained that as WKCD is located within five kilometers of the helicopter landing pad on the top of the Macau Ferry Terminal, the launching of any kind of remotely controlled flying drones or model aircraft from WKCD POS is subject to the prevailing civil aviation requirements and the permission of the Civil Aviation Department ("CAD"). Furthermore, the flying of model aircraft from the coastal areas of the Victoria Harbour is prohibited under the relevant civil aviation guidelines issued by CAD. WKCDA notes the suggestion of Mr Alvin YEUNG that as the proposed Chinese rendition of "powered flying drone" (i.e. "電動飛行靶機") may not be easily comprehensible to the general public, WKCDA should consider providing examples of such flying device in the notice(s) to be issued and displayed in WKCD POS.

Section 16 – Access to public conveniences

28. Mr CHAN Chi-chuen has enquired whether WKCDA will provide unisex toilets in WKCD to cater for the needs of carers and transgender persons and also as a family-friendly facility. According to WKCDA, family toilets will be provided in WKCD for use by persons with different needs and the provisions under section 16 of the proposed Bylaw will not apply in respect of access to such toilets.

Section 17 – Lost or Misplaced Property

29. In response to the enquiry of the Legal Adviser to the Subcommittee about the need to add a refund provision in section 17 of the proposed Bylaw, WKCDA has advised that section 17(3) protects WKCDA against any claim arising out of the sale or disposal of lost or misplaced property by its former owner, as it does not create an automatic right for a former owner of a property to claim refund of the proceeds of sale. However, it does not prohibit WKCDA from refunding such net proceeds. WKCDA can still handle any such claims on a case by case basis or introduce guidelines to handle such claims if necessary.

Section 21 – Application of Road Traffic (Public Service Vehicles) Regulations

30. In response to the enquiries of the Legal Adviser to the Subcommittee, WKCDA has advised that the provisions in Part IV of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) ("the Regulations") apply to the "designated roads" within POS because Part IV of the Regulations empowers the Commissioner for Transport to designate an area of "road" within POS for the purposes of stands and stopping places. Other parts of the Regulations (other than Part IV) and the Road Traffic Ordinance (Cap. 374) and its other subsidiary legislation also apply to a designated road within POS.

Section 24 – Name in which proceedings for offences may be brought

31. In response to members' enquiry, WKCDA has advised that while prosecutions for offences under the proposed Bylaw will generally be undertaken by WKCDA on the advice of its own legal adviser, prosecutions for more serious offences involving the Police's intervention will be dealt with by DoJ. WKCDA has stressed that it will endeavour to seek the cooperation of offenders through communication and discussion and prosecution action will only be taken as a last resort.

Proposed amendments by WKCDA

32. As mentioned in paragraphs 10, 14 and 17 above, WKCDA has agreed to propose amendments to the proposed Bylaw to address members' concerns. The proposed amendments are shown at **Appendix III** in the mark-up mode.

Recommendation

33. The Subcommittee raises no objection to the proposed amendments by WKCD and notes that the Administration will give fresh notice for moving the proposed resolution to seek LegCo's approval of the proposed Bylaw which has incorporated the proposed amendments. The Administration has subsequently advised that it will give notice to move the proposed resolution at the Council meeting of 22 June 2016.

Advice sought

34. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
8 June 2016

**Subcommittee on
Proposed Resolution under Section 37 of the West Kowloon
Cultural District Authority Ordinance (Cap. 601)**

Membership List

Chairman Hon Christopher CHUNG Shu-kin, BBS, MH, JP

Members Hon Emily LAU Wai-hing, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon Alan LEONG Kah-kit, SC
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Hon CHAN Yuen-han, SBS, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen, BBS
Hon Alvin YEUNG Ngok-kiu

(Total : 17 Members)

Clerk Ms Alice LEUNG

Legal adviser Ms Vanessa CHENG

Date 14 March 2016

Appendix II

Subcommittee on Proposed Resolution under Section 37 of the West Kowloon Cultural District Authority Ordinance (Cap. 601)

Organizations which have provided written submissions only

1. Democratic Party
2. Hong Kong Revival Project
3. NHKRT Art for all project B.V.
4. 官涌街坊福利會

West Kowloon Cultural District (Public Open Spaces) Bylaw

Contents

Section		Page
Part 1		
Preliminary		
1.	Interpretation.....	2
Part 2		
Boundary, Access, Management and Control		
2.	Interpretation.....	3
3.	Authorization by the Authority	3
4.	Permission by the Authority or authorized person.....	3
5.	Boundaries of public open spaces	3
6.	General admission etc.	4
7.	Restricted areas	5
8.	Closed areas	5
9.	Domestic animals.....	5
10.	Conduct of events	7
11.	Commercial filming, photography and recording	8
Part 3		
Conduct of Public		

Section	Page
12.	Compliance with notices and directions 10
13.	Public conduct..... 10
Part 4	
Protection of Public Open Spaces and Environment	
14.	Prohibited acts..... 13
Part 5	
Prohibition of Dangerous Goods and Firearms, etc.	
15.	Dangerous goods, firearms and offensive weapons 14
Part 6	
Public Conveniences	
16.	Access to public conveniences..... 15
Part 7	
Lost or Misplaced Property	
17.	Lost or misplaced property 16
Part 8	
Vehicles	
18.	Prohibition of motor vehicles..... 17
Part 9	
Public Transport	
19.	Interpretation..... 19

Section	Page
20. Public service vehicles and private buses	19
21. Application of Road Traffic (Public Service Vehicles) Regulations	19
22. Securing of vessels to wharfs of public open spaces	20

Part 10

Enforcement

23. Enforcement.....	21
24. Name in which proceedings for offences may be brought.....	22

West Kowloon Cultural District (Public Open Spaces) Bylaw

~~(Made by the West Kowloon Cultural District Authority under section 37 of the West Kowloon Cultural District Authority Ordinance (Cap. 601) subject to the approval of the Legislative Council)~~

Preamble

WHEREAS—

- (1) the vision and mission of the West Kowloon Cultural District Authority for the public open spaces in the West Kowloon Cultural District are formulated in the light of section 4, and in particular section 4(2)(m), of the West Kowloon Cultural District Authority Ordinance (Cap. 601);
- (2) the West Kowloon Cultural District Authority aims to provide or facilitate the provision of free and accessible open space within the leased area to the general public; and
- (3) the West Kowloon Cultural District Authority aims to manage the open space in ways which aim to achieve the mission for the open space to inspire, promote and encourage cultural pursuits for all;

NOW, THEREFORE, the West Kowloon Cultural District Authority under section 37 of the West Kowloon Cultural District Authority Ordinance (Cap. 601) and subject to the approval of the Legislative Council has made the following Bylaw—

Part 1

Preliminary

1. Interpretation

In this Bylaw—

authorized person (獲授權人士) means a person authorized under section 3;

ensure public safety or order (確保公共安全或秩序) means to ensure—

- (a) the health or safety of any person in a public open space;
- (b) the health or safety of any animal in a public open space;
- (c) the safety of any property in a public open space; or
- (d) the orderly and undisturbed enjoyment of any part of a public open space by any person;

Park Administration Office (公園行政辦公室) means the building designated as such by the Authority;

permission (准許) means a permission given under section 4;

public open space (公眾休憩用地) means any public open space within the leased area as delineated on a plan published by the Authority under section 5(1);

publish (發布), in relation to a plan referred to in section 5, means issuing or distributing the plan by making it available to the public by the display of notices, by computer or other devices or by any other means.

Part 2

Boundary, Access, Management and Control

2. Interpretation

In this Part—

closed area (封閉區域) means any part within a public open space which is temporarily closed to the public under section 8;

event (活動) means any event, exhibition or performance conducted within a public open space;

restricted area (限制區域) means any part within a public open space delineated as an area to which admission is restricted under section 5(2).

3. Authorization by the Authority

The Authority may authorize any of its officers or employees or any other person as it sees fit to perform the functions of an authorized person under this Bylaw and to enforce, or otherwise perform the functions relating to or with respect to, this Bylaw.

4. Permission by the Authority or authorized person

The Authority may give written permission, and an authorized person may give written or oral permission, to a person to do, carry out, conduct or perform an act or activity within a public open space which is otherwise prohibited or restricted under this Bylaw.

5. Boundaries of public open spaces

(1) The Authority must cause a plan to be published delineating the boundaries of all public open spaces and may from time

to time cause a new plan to be published in substitution for an existing plan, and may from time to time endorse on an existing plan or a new plan any amendment made to it.

- (2) The Authority may from time to time cause another plan to be published to delineate any area within the boundaries described in subsection (1) to which admission to the public is restricted at all times.
- (3) A restricted area must be demarcated and clearly marked out in the plan referred to in subsection (2) to show that entry to such area is restricted.
- (4) The plans prepared under this section must be kept in the Authority's office.
- (5) A copy of the plans prepared under this section must be made available for public inspection at the Authority's office, its website and in the Park Administration Office.

6. General admission etc.

- (1) A person must comply with all instructions issued in writing by the Authority or given by an authorized person for the purposes of ensuring public safety or order relating to a public open space (including any restricted area or closed area).
- (2) The power of the Authority or an authorized person under subsection (1) includes the power to refuse to admit a person into a public open space or any part of a public open space, or direct a person to immediately leave a public open space or any part of a public open space, if the Authority or authorized person reasonably believes that it is necessary to exercise such power to ensure public safety or order.

7. Restricted areas

- (1) A person must not enter or remain in, or attempt to enter or remain in, a restricted area without permission.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.

8. Closed areas

- (1) The Authority or an authorized person may temporarily close to the public any part of a public open space, or any building within a public open space, by displaying a notice prominently in or adjacent to the closed area or building.
- (2) The power of the Authority or an authorized person to close the area (including the building) under subsection (1) includes the power to block any entrance to or exit from a closed area or building within a public open space, for the purposes of ensuring public safety or order, to facilitate repair or maintenance works in a closed area, or for the purposes of conducting an event, as reasonably necessary.
- (3) A person must not enter or exit any part of a public open space, or any building within a public open space, that is closed to the public under subsection (1), except through an entry point or exit designated by the Authority for use by the public.
- (4) A person who, without reasonable excuse, contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 1.

9. Domestic animals

- (1) The Authority may from time to time, by displaying a notice in any part of a public open space, prohibit any person from

bringing certain classes of domestic animal into the public open space.

- (2) A person must not bring into a public open space a domestic animal of any class which has been prohibited under subsection (1).
- (3) A person must not bring a domestic animal into a public open space unless the animal is at all times on a lead, carried in a proper cage or container, or otherwise under the control by other appropriate means of the person responsible for the animal.
- (4) A person who brings a domestic animal into a public open space must not allow the animal to cause a danger, nuisance or annoyance to any other person.
- (5) A person who brings a domestic animal into a public open space must comply with all notices displayed by the Authority in any part of the public open space from time to time regarding the control of or cleaning up after the animal.
- (6) A person who brings a domestic animal into a public open space must—
 - (a) remove any faeces deposited by the animal in the public open space to a waste disposal facility; and
 - (b) dilute with water any urine left by the animal in the public open space.
- (7) A person who brings a domestic animal into a public open space must remove the animal from the public open space on request by an authorized person.
- (8) Subsection (7) does not apply to a disabled person who brings an assistance animal into a public open space.
- (9) A person who, without reasonable excuse, contravenes subsection (2), (3), (4), (5), (6) or (7) commits an offence and is liable on conviction to a fine at level 1.

10. Conduct of events

- (1) Except with the written permission of the Authority, a person must not conduct an event in a public open space.
- (2) The Authority may give a written permission to a person (including an organizer) generally or in a particular case.
- (3) Except with the written permission of the Authority, an organizer must not—
 - (a) erect any structure, stand, booth, platform or exhibit for an event; or
 - (b) require a ticket or other permit for admission to an event.
- (4) The Authority, an authorized person or an organizer may do any one or more of the following—
 - (a) limit the number of persons who may enter any part of a public open space used for the event;
 - (b) impose terms and conditions of entry to any part of a public open space used for the event as specified by a written notice, which is prominently displayed at the entrance of the public open space or in any part of the public open space;
 - (c) limit admission to any part of a public open space used for the event (including a closed area) to persons over or under a certain age as specified by a written notice, which is prominently displayed at the entrance of the public open space or in any part of the public open space to which admission to the public open space is so limited.
- (5) If an authorized person or an organizer reasonably suspects that a person participating in an event in a public open space does not meet any age requirement for admission to the

event, the authorized person or the organizer concerned may request the person to produce proof of age.

- (6) For the purposes of subsection (5), in the absence of proof of age of the person, the age of the person as determined by the authorized person or the organizer concerned is the person's age for the purposes of this Bylaw.
- (7) A person who does not meet the age requirement concerned, or who is unable or unwilling to produce the proof requested under subsection (5), or a person is determined under subsection (6) as not meeting the age requirement for admission, may be required by the authorized person or the organizer to leave that part of the public open space used for the event.
- (8) A person who is required to leave any part of the public open space used for the event must do so immediately.
- (9) A person who, without reasonable excuse, contravenes subsection (1), (3) or (8) commits an offence and is liable on conviction to a fine at level 1.
- (10) In this section—
organizer (籌辦人), in relation to an event, means a person to whom a written permission has been given by the Authority to conduct the event.

11. Commercial filming, photography and recording

- (1) Except with the written permission of the Authority, a person must not carry out filming, photography or any form of recording of a visual image or sound in a public open space with a view to selling, publishing or publicly exhibiting any items relating to the acts described above in the course of business for advantage or gain.

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- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.
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Part 3

Conduct of Public

12. Compliance with notices and directions

- (1) The Authority may, by a written notice prominently displayed in any part of a public open space, restrict or prohibit any conduct of the public in the public open space for the purposes of ensuring public safety or order.
- (2) A person in a public open space must comply with the written notice of the Authority issued under subsection (1), and any direction given or request made by an authorized person, for the purposes of ensuring public safety or order.
- (3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 1.

13. Public conduct

- (1) A person must not, in a public open space—
 - (a) spit, urinate, defecate or perform any other bodily function contrary to public decency, except in facilities specifically provided for that purpose;
 - (b) dispose of any litter, except in the litter receptacles provided and designated for receipt of litter of that kind;
 - (c) melt or burn wax or paper in such manner as to cause or be likely to cause a risk of injury to any person or damage to property;
 - (d) throw a stone or missile, or discharge a gun, air gun, bow and arrow, catapult or other similar device;

- (e) beg or solicit alms;
 - (f) smoke or carry a lighted cigarette, cigar or pipe, except in any smoking area designated as such by a written notice of the Authority;
 - (g) cause a nuisance or annoyance to any other person after being requested to desist from such conduct by an authorized person;
 - (h) play ball games, use bicycles, skateboards, roller skates or any similar apparatus or equipment in any part of a public open space where the Authority has by written notice prohibited such activities;
 - (i) without permission, offer for sale or sell any article or service;
 - (j) without permission, dump, abandon or leave behind any vehicle, equipment, construction debris, waste matter, rubbish, refuse or unwanted articles of any kind;
 - (k) without permission, fly a kite with a control string longer than 50 m, any remotely controlled powered flying drone or model aircraft (whether fuelled by hydrocarbon or alcohol based fuels or powered by electricity), or any untethered balloon filled with heated air or lighter than air gases more than 10 m above ground level;
 - (l) without permission, climb a perimeter wall, fence, post, barrier or any structure; or
 - (m) without written permission, camp out.
- (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.

- (3) The Authority may, without any notice to the owner concerned, remove and dispose of any vehicle, equipment, construction debris, waste matter, rubbish, refuse or unwanted articles of any kind dumped, abandoned or left behind in any part of a public open space in breach of this section in such manner and at such time as the Authority sees fit.
- (4) The Authority incurs no liability for, and no claim for damages or compensation is to be brought against the Authority by any person in respect of, the removal or disposal referred to in subsection (3), other than the liability for negligence or wilful default.
- (5) In this section—
- litter*** (扔棄物) includes any refuse, rubbish, earth, dirt, filth, dust, sawdust, paper, timber off-cuts, ashes, excreta and any other matter of a like nature.
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Part 4

Protection of Public Open Spaces and Environment

14. Prohibited acts

- (1) A person must not, without permission—
 - (a) remove, interfere with, deface or damage any equipment, apparatus, fitting, fixture or facility in any part of a public open space;
 - (b) remove, interfere with, damage or injure any tree or plant in a public open space;
 - (c) light any fire, barbecue or otherwise cook food in a public open space;
 - (d) feed or attempt to feed feral animals or birds kept or found in a public open space;
 - (e) distribute any bill, placard or notice, or affix any bill, placard or notice to or on any tree or plant in a public open space, or to any part of any building, railing, bench, seat, gate, wall or other structure, erection or ornament in a public open space or enclosing a public open space; or
 - (f) remove, displace or otherwise tamper with any life-saving appliance provided by the Authority in a public open space, except for the purposes of using such appliance for the purposes for which it is intended.
 - (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.
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Part 5

Prohibition of Dangerous Goods and Firearms, etc.

15. Dangerous goods, firearms and offensive weapons

- (1) A person must not, without lawful authority, bring into a public open space or possess any of the following items in a public open space—
 - (a) any dangerous goods as defined by section 2 of the Dangerous Goods Ordinance (Cap. 295);
 - (b) any firearm, ammunition or offensive weapon of any description.
 - (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 3.
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Part 6

Public Conveniences

16. Access to public conveniences

- (1) Except with permission or ~~a lawful~~ reasonable excuse, a male person must not enter any part of a public convenience that is allocated for the exclusive use of female persons.
 - (2) Subsection (1) does not apply to a child under the age of 5 years who is accompanied by a female person in charge of or supervising the child.
 - (3) Except with permission or ~~a lawful~~ reasonable excuse, a female person must not enter any part of a public convenience that is allocated for the exclusive use of male persons.
 - (4) Subsection (3) does not apply to a child under the age of 5 years who is accompanied by a male person in charge of or supervising the child.
 - (5) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine at level 1.
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Part 7

Lost or Misplaced Property

17. Lost or misplaced property

- (1) A person who comes into possession of any property in a public open space which appears to have been lost or misplaced must, as soon as practicable, hand over the property to an authorized person.
 - (2) Any lost or misplaced property which comes into the possession of the Authority or an authorized person—
 - (a) in the case of perishable, noxious or otherwise offensive goods or articles, may be disposed of by the Authority by sale or otherwise as soon as practicable; or
 - (b) in any other case, may be retained by the Authority for a period of 3 months after the property has come into its possession or the possession of the authorized person, and if at the end of that period the property remains unclaimed, it is deemed to become the property of the Authority free of all rights and encumbrances, and the Authority may dispose of the property by sale or otherwise.
 - (3) The Authority incurs no liability to any person for any lost or misplaced property as a bailee or otherwise, and no claim for damages or compensation is to be brought against the Authority by any person for the property.
 - (4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.
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Part 8

Vehicles

18. Prohibition of motor vehicles

- (1) A person must not drive, bring or cause to be driven or brought any motor vehicle into a public open space without permission, except in a car park within the public open space.
- (2) Subsection (1) does not apply to—
 - (a) a powered wheelchair or other similar apparatus used solely for the conveyance of an invalid or disabled person; or
 - (b) an emergency vehicle.
- (3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.

- (4) In this section—

car park (停車場) means any area designated by the Authority as a car park and which is open to the public, whether operated by the Authority directly or by another person and whether or not a parking fee is chargeable;

emergency vehicle (緊急服務車輛) means a vehicle driven by any of the following persons—

- (a) a police officer acting in the course of his or her duties as a police officer;
- (b) a member of an ambulance service providing transport for sick or injured persons;

- (c) a member of a fire fighting and emergency rescue and assistance service or the Civil Aid Service providing transport in the course of an emergency;
- (d) an authorized person acting in the course of his or her duties;

motor vehicle (汽車) has the meaning given by section 2 of the Road Traffic Ordinance (Cap. 374).

Part 9

Public Transport

19. Interpretation

In this Part—

designated road (指定道路) means any land set aside and designated by the Authority as a designated road under section 20(1);

private bus (私家巴士) has the meaning given by section 2 of the Road Traffic Ordinance (Cap. 374);

public service vehicle (公共服務車輛) has the meaning given by section 2 of the Road Traffic Ordinance (Cap. 374).

20. Public service vehicles and private buses

- (1) The Authority may set aside any land within a public open space and designate such land as a designated road for use by public service vehicles and private buses for such purposes and between such hours as may be specified from time to time by the Authority as it sees fit.
- (2) The Authority may determine the purposes for which, and the conditions under which, the designated road may be used by public service vehicles and private buses, and the conditions under which the land designated under subsection (1) may be used.

21. Application of Road Traffic (Public Service Vehicles) Regulations

- (1) Part IV of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) applies to a public open space subject to the modifications set out below—

- (a) a reference to “road” includes “designated road”;
 - (b) subject to paragraph (c), a reference to “the Commissioner” is to be construed as a reference to “the Commissioner for Transport or the West Kowloon Cultural District Authority in conjunction with the Commissioner for Transport”; and
 - (c) in applying regulations 31 and 32, a reference to “the Commissioner of Police” is to be construed as a reference to “the Commissioner of Police or the West Kowloon Cultural District Authority”.
- (2) In applying Part IV of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) in relation to a designated road, as modified under subsection (1), the provisions may be enforced by an authorized person.
 - (3) Any person who without reasonable excuse contravenes any of the provisions of, or any requirement under, regulation 33, 34, 35 or 36 of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) as it applies to a public open space under this Bylaw commits an offence and is liable on conviction to a fine at level 2.

22. Securing of vessels to wharfs of public open spaces

- (1) A person must not, without permission, secure any vessel (including a charter boat, a water taxi or ferry, and a pleasure craft) to any pier, jetty, landing stage or dock attached to or serving a public open space.
 - (2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 1.
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Part 10

Enforcement

23. Enforcement

- (1) A person must not obstruct, disturb or interfere with an authorized person, an agent or a contractor of the Authority in the execution of their duties or performance of any works in connection with a public open space or any part of a public open space.
- (2) If an authorized person reasonably suspects that a person in a public open space has contravened this Bylaw, the authorized person may, after advising the person of the act or omission that constitutes the suspected contravention, require the person to produce proof of identity and state the person's true address.
- (3) A person who, without reasonable excuse, fails to produce proof of identity or state the true address under subsection (2) commits an offence and is liable on conviction to a fine at level 1.
- (4) An authorized person may require a person to leave a public open space or any part of a public open space if—
 - (a) the authorized person reasonably suspects that the person has contravened this Bylaw; or
 - (b) the person does not comply with a requirement of any authorized person under subsection (2) or a notice displayed by the Authority under section 8(1).
- (5) A person who fails to leave a public open space or any part of a public open space after being required to do so under subsection (4) may be removed from the public open space by

an authorized person by the use of reasonable force if necessary.

- (6) A person who, without reasonable excuse, fails to leave a public open space or any part of a public open space after being required to do so under subsection (4) commits an offence and is liable on conviction to a fine at level 1.
- (7) If an authorized person reasonably suspects that a person in a public open space has committed an offence under this Bylaw, the authorized person may—
 - (a) require the person to accompany the authorized person to the Authority's office, the Park Administration Office or a police station; and
 - (b) detain the person until the person is delivered into the custody of a police officer to be dealt with according to law.
- (8) A person who, without reasonable excuse, refuses to be accompanied or detained under subsection (7) commits an offence and is liable on conviction to a fine at level 2.

24. Name in which proceedings for offences may be brought

Without prejudice to any Ordinance relating to the prosecution of criminal offences or the powers of the Secretary for Justice in relation to the prosecution of criminal offences, prosecutions under this Bylaw may be brought in the name of the Authority.

Made by the West Kowloon Cultural District Authority
this day of 2016.

THE CORPORATE SEAL of the)
WEST KOWLOON CULTURAL)
DISTRICT AUTHORITY)
is affixed by authority of the)
Board of the West Kowloon Cultural)
District Authority, and authenticated by:)

(Authorized Signature)

(Authorized Signature)

Explanatory Note

This Bylaw provides for the management, control, operation and use of public open spaces within the West Kowloon Cultural District (*Public Open Spaces*) in order to ensure public safety or order and prevent nuisances, and provides for related matters.

2. Part 1 contains definitions of terms and expressions used in this Bylaw.
3. Part 2 contains provisions that—
 - (a) empower the West Kowloon Cultural District Authority (*the Authority*) to delineate the boundaries of Public Open Spaces and restricted areas;
 - (b) provide for the power of authorized persons to restrict admission so as to ensure public safety or order in Public Open Spaces;
 - (c) prohibit members of the public from entering restricted areas of Public Open Spaces without permission;
 - (d) enable the Authority and authorized persons to temporarily close certain parts of Public Open Spaces;
 - (e) permit domestic animals, including assistance animals, to be brought into Public Open Spaces, unless the animals are in a class which is prohibited;
 - (f) provide for the conduct of events in Public Open Spaces; and
 - (g) enable the Authority to control commercial filming and photography in Public Open Spaces.
4. Part 3 contains provisions that regulate the conduct of the public in Public Open Spaces.

5. Part 4 contains provisions for the protection of Public Open Spaces and the environment.
6. Part 5 prohibits dangerous goods, firearms and offensive weapons from being brought into Public Open Spaces.
7. Part 6 contains provisions relating to access to public conveniences in Public Open Spaces.
8. Part 7 contains provisions dealing with lost or misplaced property.
9. Part 8 prohibits motor vehicles from being brought into Public Open Spaces without permission.
10. Part 9 contains provisions that—
 - (a) empower the Authority to set aside land within Public Open Spaces for use by public service vehicles and private buses; and
 - (b) regulate the securing of vessels to wharfs adjacent to Public Open Spaces.
11. Part 10 contains provisions relating to the general enforcement of the Bylaw.