

For discussion on
2 February 2016

Legislative Council Panel on Food Safety and Environmental Hygiene

**Creation of a directorate post
in the Food and Environmental Hygiene Department
for regulation of private columbaria**

PURPOSE

This paper seeks Members' views on the proposal to create a supernumerary directorate post at the Administrative Officer Staff Grade B (AOSGB) rank in the Food and Environmental Hygiene Department (FEHD) for a period of five years to support the Director of Food and Environmental Hygiene (DFEH) in steering and overseeing the implementation of the Private Columbaria Ordinance (the Ordinance).

BACKGROUND

2. The Private Columbaria Bill (the Bill) was introduced into the Legislative Council on 25 June 2014. The Bill seeks to introduce a licensing regime to regulate the operation of private columbaria. Our policy objectives include ensuring compliance with the statutory and administrative requirements (with grandfathering arrangements as appropriate), enhancing protection of consumer interests and ensuring a sustainable and orderly provision of niches by private columbaria. The vetting of the Bill by the Bills Committee is now proceeding in full steam. We plan on the assumption that the Bill would be enacted by summer this year. Preparation has to be made to enable implementation to start as soon as possible thereafter.

JUSTIFICATIONS

3. The majority of existing private columbaria are in breach of statutory and Government requirements, including planning, land and building requirements. Members of the public, especially residents living near such columbaria are dissatisfied with their presence and the traffic impact and environmental nuisance caused by them. Consumers demand better protection. There have been instances of descendants complaining about the difficulties in enforcing an agreement after the purchaser had passed away, or in getting back the money and the ancestors' ashes after business cessation of a columbarium operator.

4. The Bill introduces for the first time a regulatory regime on private columbaria. As in any transition before the full benefits of a regulatory regime could materialise, dislocations and resistance by vested interests are inevitable. Since the problems have been in existence for the past few decades, we would not under-estimate the time and effort needed to clear up the legacy. In view of the expected complexity and volume of work involved in regularisation and rectification, we consider it necessary to create a supernumerary AOSGB post for five years to head a new, dedicated branch in FEHD, i.e. the Regulation of Private Columbaria Branch (RPCB), to implement the new Ordinance when enacted. The holder of the proposed post is also expected to take up chairmanship of the Private Columbaria Licensing Board (the Licensing Board) to be set up under the Ordinance to determine applications for licences and other specified instruments.

Major Responsibilities of the RPCB

5. The new RPCB would have an establishment of about 50 non-directorate staff¹, comprising a Licensing Board Secretariat, a licensing team, and an enforcement team.

¹ These include 43 new civil service posts and seven posts to be redeployed from the existing Cemeteries and Crematoria (Special Duties) Team of FEHD upon the establishment of the RPCB.

(a) *Licensing Board Secretariat*

6. A statutory Licensing Board will be set up under the new Ordinance to determine applications for licences, exemption or temporary suspension of liability (TSOL), to issue guidelines and codes of practices about the operation and management of columbaria, and to impose terms and conditions on the specified instruments as it thinks appropriate. The proposed AOSGB post (to be referred to as “Head(RPCB)” hereinafter) will chair the Licensing Board and supervise the work of the Licensing Board Secretariat which services the Board. The Secretariat will also assist the Board in formulating its rules and procedures, handbook and guidelines, declaration of interest arrangements, prepare meeting papers and minutes, and make arrangements for conducting Board meetings.

(b) *Licensing Team*

7. The Licensing Team will support the Licensing Board in discharging its statutory functions. In particular, the Team will carry out administrative work relating to various aspects of handling applications for licences, exemption and TSOL, including –

- (a) formulating application guidelines, application forms, management plan guidelines, forms of specified instruments, sample agreement templates for sale/lease of niches, as well as guidelines for maintaining a register of such agreements and a register on interment and disinterment of ashes etc.;
- (b) conducting briefing sessions to explain the application eligibility and procedures to prospective applicants;
- (c) formulating protocol and operation manual with relevant bureaux and departments to put in place proper procedures for processing in a co-ordinated manner applications received;
- (d) vetting the applications from an environmental hygiene perspective and co-ordinating the input from relevant bureaux and departments in respect of planning, land use, building and fire safety, rights to use premises, management plan, plans covering ash interment

layout, ash interment capacity, ash interment quantity etc.;

- (e) conducting on-site inspections as necessary to check factual accuracy of the information submitted in the applications;
- (f) making recommendations on any terms and conditions to be attached to the specified instruments to be granted by the Board, in consultation with relevant bureaux and departments; and
- (g) handling enquiries and complaints from stakeholders.

8. The above work is complicated, contentious and voluminous for the following reasons –

- (a) it is complicated as the applications for licences have to comply with a range of requirements relating to planning, lands, building safety, fire safety, rights to use premises, etc. According to the information gathered by the Development Bureau and under the Notifications Scheme administered by FEHD, the majority of existing private columbaria do not fully comply with these requirements. As we have explained in the paper for the Panel meeting on 12 January 2016 (vide LC Paper No. CB(2)587/15-16(05)), the relevant rectification / regularisation work is expected to involve complex procedures and disputes;
- (b) the work is contentious. We expect significant conflicts in interests among different stakeholders, particularly between the private columbaria operators and residents nearby. Resolving the conflicts would not be easy, given the financial stakes involved and residents' understandable concern about their living environment. Also implicated would be the interests of the consumers affected by the cessation of columbarium operations. In addition, we would not wish to under-estimate the possible reactions of land/premises owners whose property would be affected by the ash disposal procedures upon cessation of columbarium operations; and
- (c) the work is also voluminous as the information gathered by the Government so far indicates there are at least around 140 private

columbaria in operation. We envisage that, soon after the new Ordinance comes into operation, the majority of existing private columbaria will submit applications to the Licensing Board for different specified instruments so that they could continue their operation. This involves a huge amount of meticulous work relating to vetting, coordination with other departments and outside parties, inspections, handling enquiries, complaints, appeals or even judicial reviews. Some vetting may also necessitate verification of the legality of actions taken/instruments concluded decades ago.

(c) ***Enforcement Team***

9. The Enforcement Team in the RPCB will undertake enforcement work against private columbaria which contravene provisions in the Ordinance, particularly in respect of –

- (a) sale of niches or interment rights without a licence after the Ordinance comes into operation;
- (b) abscondment without properly disposing of ashes in their possession in the prescribed manner;
- (c) continued operation if no applications for specified instruments have been made by the expiry of a grace period²;
- (d) continued operation after their applications for new issue or renewal of licences, exemption and TSOL (as the case may be) have been rejected and appeals, if lodged, dealt with; and
- (e) failure to comply with the terms and conditions imposed by the Board.

The work on collection of evidence, liaison with legal advisors and prosecution involving summary conviction or indictable conviction is, by nature, time-consuming and complex.

² This is subject to clause 21(2) of the Bill, which provides that the Licensing Board may consider applications for specified instruments made out of time.

10. While the primary responsibility for proper disposal of ashes kept by a private columbarium rests squarely with the columbarium operator concerned³, the Enforcement Team will need to be proactive in ensuring that this is done and to keep information on ash disposal by columbaria. Close monitoring of the follow-up actions taken by private columbarium operators is needed to minimise the risks of abrogation of responsibility. In respect of genuine cases of unclaimed ashes upon business cessation of a columbarium operator, the RPCB of the FEHD has to pick up the pieces. This could involve application to the Court for occupation orders and the consequential need to handle court hearings and submissions by land owners. At the same time, the RPCB would also need to provide temporary storage for the ashes while renewing efforts to contact the descendants of the interred notwithstanding the likely paucity of personal data on the interred in FEHD's possession. Where there is evidence of abrogation of responsibility by private columbarium operators, the RPCB may also need to instigate prosecution. Work relating to unclaimed ashes not only involves stringent statutory and administrative procedures as well as meticulous efforts, but also respect for the deceased and sensitivity for the feelings of the descendants. The Enforcement Team may also be required to resolve disputes among family members in the event of competing claims for ashes and associated articles deposited in the niches.

11. In sum, the ash disposal procedure could be complicated as it involves personal data of claimants, court procedures on occupation orders and claiming of ashes and items displaced from the niches. Also, it could become a sensitive issue when we come to the final disposal of unclaimed ashes. If many columbaria cease operation, it could take a long time (could be in terms of years) for FEHD to handle all the ashes.

³ Any government act to handle ash disposals would inevitably involve the use of limited public resources. This should only be done sparingly with respect to ashes that remain unclaimed after conscientious and thorough attempts by the operators to relocate the ashes and contact the surviving relatives and friends of the interred. Otherwise, significant moral hazard would result – after all, the purchase of niches is a commercial transaction between two private parties, with the columbarium operators reaping not insubstantial financial returns.

Major Responsibilities of the Head(RPCB)

12. We consider that the RPCB should be led by a sufficiently senior directorate officer who possesses the necessary leadership skills, administrative experience, strategic vision and political acumen to steer through the complicated, contentious and demanding portfolio and the wide range of issues outlined above. We propose to create a supernumerary post of Head(RPCB) post at the AOSGB rank for five years to oversee the implementation of the new Ordinance.

13. Head(RPCB) will provide overall strategic direction to the RPCB and oversee all aspects of its work. This includes putting in place the operational framework, procedures, guidelines and manpower structures for regulation of private columbaria; chairing the Licensing Board to consider and determine the merits of applications from private columbaria for licences, exemption and TSOL; providing steer for an effective enforcement strategy against breaches of the Ordinance; and overseeing plans for ash disposal in the prescribed manner, etc. The holder of the post will lead the RPCB in dealing with sensitive and complex issues regarding ensuring compliance with various eligibility requirements, challenges from the operators / applicants against various aspects of the regulatory work, complaints from other stakeholders such as nearby residents and claimants of displaced ashes. The new post will help ensure effective communications with stakeholders and high-level co-ordination among relevant bureaux and departments in furtherance of the objectives and functions of the new regulatory regime vis-à-vis private columbaria. Head(RPCB) will report to the DEFH. The proposed duty list of the post and organization chart of the RPCB are at **Annexes A and B**.

14. On the duration of the proposed Head(RPCB) post, we expect that it will take the Licensing Board and the RPCB several years to handle the applications for exemption, licences and TSOL from private columbaria that have been in existence before the new Ordinance comes into operation. On current planning, the Licensing Board would need to commence operation ahead of the implementation of the provisions relating to the receipt of applications under the new Ordinance. It would start to receive applications from private columbaria upon completion of the necessary preparation (which would likely take a few months after the enactment of the Ordinance).

Existing private columbaria would then be given around three months to file their applications. Eligible applicants currently not meeting the land use, planning, building or other statutory requirements but fulfilling certain specified criteria would be granted a TSOL, initially for up to three years (and extendable, where justified, by up to another three years), to allow them to pursue rectification or regularisation with relevant Government departments before being granted a licence or exemption as the case may be. This rectification / regularisation process would involve complex procedures and disputes, such as applications to the Town Planning Board for changes in land use and/or planning parameters; discussions with the District Councils; traffic impact assessments; assessment of land premium by the Lands Department; assessment of structural safety by authorised persons / registered structural engineers; ascertaining the applicants' rights to use the columbarium premises; and examination of their management plan, etc. As the operation of private columbaria involves huge financial returns, the operators are likely to mount vigorous challenges of every aspect that may frustrate their attempts to seek regularisation / rectification at a lower cost. The possibility of appeals and judicial reviews cannot be ruled out either.

15. Hence, it is expected that it would take at least several years for this regularisation / rectification process to complete; for the Licensing Board to complete determination of the applications for exemption / licences for the pre-Bill columbaria; and for the appeals arising from the Licensing Board's decisions on such applications to be dealt with. However, the exact duration of time that needs to be taken is difficult to estimate at this stage. The picture may become clearer when the first three-year term of the TSOL expires.

ALTERNATIVES CONSIDERED

16. We have critically examined whether the duties of the proposed directorate post could be absorbed by the existing two Deputy Directors (DDs) ranked at D3 within FEHD. Having regard to their portfolio and current workload as well as the complexity and huge volume of work envisaged in the implementation of the new Ordinance, we consider it not feasible for the existing DDs to absorb any such additional work without compromising the delivery of their existing duties. The existing organization chart of FEHD

and the details of the work schedule of the two existing DDs are at **Annexes C and D** respectively.

FINANCIAL IMPLICATIONS

17. The proposed creation of the supernumerary directorate post will incur a notional annual salary cost at mid-point of \$2,290,800. The full annual average staff cost, including salaries and on-costs, is \$3,279,648. FEHD will include sufficient provision in the 2016-17 draft Estimates to meet the costs of the staffing proposal and reflect the resources required in the Estimates of subsequent years.

18. The notional annual salary cost at mid-point for the 43 non-directorate new civil service posts is \$21,662,040 in a full year and the full annual average staff cost, including salaries and on-costs, is to be \$28,030,872. FEHD will reflect the necessary provision in the draft Estimates of the relevant financial years to meet the costs of the staffing proposal..

ADVICE SOUGHT

19. Members are invited to provide views on the proposed creation of the supernumerary directorate Head(RPCB) post for five years to lead and oversee the RPCB. Subject to Members' views, we plan to submit the proposal to the Establishment Subcommittee on 2 March 2016 for recommendation to the Finance Committee for approval on 6 May 2016.

**Food and Health Bureau
Food and Environmental Hygiene Department
January 2016**

**Job Description for the Post of
Head (Regulation of Private Columbaria Branch)**

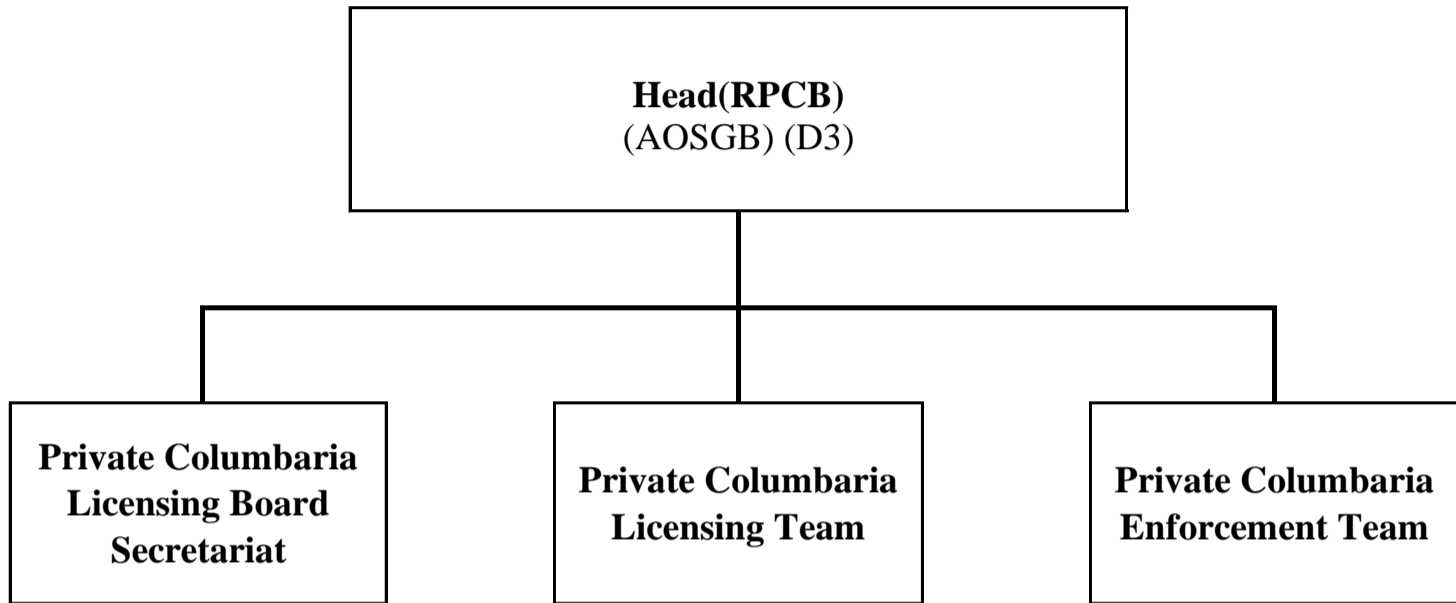
Rank : Administrative Officer Staff Grade B (D3)

Responsible to : Director of Food and Environmental Hygiene

Main Duties and Responsibilities

1. To provide strategic direction to the Regulation of Private Columbaria Branch (RPCB) in the implementation of the Private Columbaria Ordinance.
2. To steer the setting up of the mechanisms, procedures, guidelines and execution manpower structures for the RPCB and the provision of support to the Private Columbaria Licensing Board.
3. To assume the role of chairperson of the Private Columbaria Licensing Board to consider and determine the merits of applications for licence, exemption and temporary suspension of liability as well as the transfer and renewal of and variation of conditions in such specified instruments made under the Private Columbaria Ordinance.
4. To oversee the enforcement actions against illegal private columbaria and other breaches of the Private Columbaria Ordinance.
5. To oversee compliance with the statutory requirements on prescribed ash disposal procedures by the private columbaria under the Private Columbaria Ordinance and the implementation of the ash disposal procedures by the RPCB.
6. To steer the RPCB in dealing with sensitive and complex issues regarding ensuring compliance with various eligibility requirements, challenges from the operators/ applicants against various aspects of the regulatory work, complaints from other stakeholders such as residents living near private columbaria and claimants of displaced ashes, etc.
7. To co-ordinate matters at a senior level that cut across Bureaux and Departments for the speedy resolution of applications and enforcement issues.
8. To strategise the publicity and communication of the regulatory requirements and efforts to the public and all relevant stakeholders.

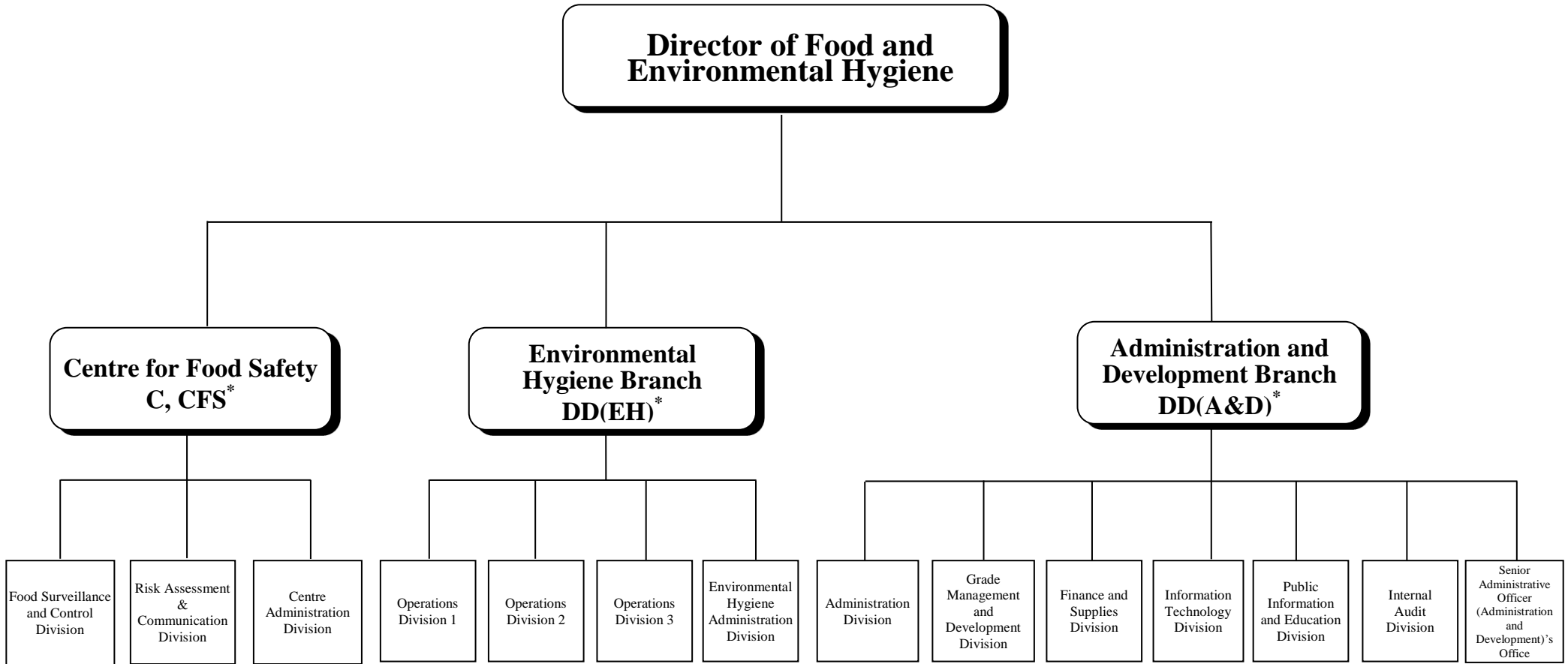
Organisation Chart of the planned Regulation of Private Columbaria Branch (RPCB)



Legend :

AOSGB Administrative Officer Staff Grade B

ORGANISATION CHART OF FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT



*
 C, CFS : Controller, Centre for Food Safety
 DD(EH) : Deputy Director (Environmental Hygiene)
 DD(A&D) : Deputy Director (Administration and Development)

**Major Duties and Responsibilities of
the Existing Deputy Directors of FEHD**

At present, DD(A&D) supervises seven divisions of the FEHD. These divisions are responsible for appointments, discipline, personnel services and establishment, complaints management, general administration, planning and development of capital projects, grade management, outsourcing policies and systems, quality assurance, staff training, finance and supplies, public information and education, information technology development and internal audit. DD(A&D) oversees the human resources management matters and development of the professional grades, general support, housekeeping and financial management of the Department; steers capital works (including public columbaria, crematoria, toilets, market improvement, refuse collection points, etc.) and information technology projects; formulates and reviews policies on public markets; and formulates policies and strategies relating to the other work of the seven divisions.

2. DD(EH) directly supervises three operations divisions which oversee district environmental hygiene operations and facilities in Hong Kong, Kowloon and the New Territories and one environmental hygiene branch administration division. The schedule of duties of DD(EH) spans extensively across a wide range of areas, including the strategic management of hawker control, public markets and public cooked food markets; of cemeteries, crematoria and columbaria; of slaughterhouses; of food businesses, trades and liquor licensing; of environmental hygiene services which cover street cleansing, pest and rodent control and collection of domestic wastes and recyclables; planning of enforcement operations against illegal outside seating by restaurants, illegal shop front extensions, unauthorised display of non-commercial publicity materials, fly-tipping, dripping from air-conditioners and water seepage in private buildings; and oversight of influenza/coronavirus disease related matters.