

立法會
Legislative Council

LC Paper No. CB(2)910/16-17
(These minutes have been
seen by the Administration)

Ref : CB2/BC/1/16

Bills Committee on Private Columbaria Bill

Minutes of the second meeting
held on Tuesday, 20 December 2016, from 4:30 pm to 6:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon CHAN Hak-kan, BBS, JP (Chairman)
Hon Tanya CHAN (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin, BBS
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHU Hoi-dick
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Hon LAU Kwok-fan, MH
Hon Nathan LAW Kwun-chung
Dr Hon LAU Siu-lai

Members absent : Hon Paul TSE Wai-chun, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon Elizabeth QUAT, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung

Public Officers attending : Item II

Mr Daniel CHENG, JP
Deputy Secretary for Food and Health (Food) 1
Food and Health Bureau

Miss Diane WONG
Principal Assistant Secretary for Food and Health
(Food) 2
Food and Health Bureau

Mr Peter SZE
Senior Government Counsel
Department of Justice

Miss Cindy CHEUK
Senior Government Counsel
Department of Justice

Mr CHIU Yu-chow
Assistant Director (Grade Management and
Development)
Food and Environmental Hygiene Department

Mr Thomas LEUNG
Assistant Director/ New Buildings 1
Buildings Department

Ms Doris CHOW
Assistant Director (Estate Management) (Lands
Administration Office/ Headquarters)
Lands Department

Ms Christine TSE
Assistant Director of Planning /Special Duties

Planning Department

Clerk in attendance : Mr Colin CHUI
Chief Council Secretary (2) 4

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Catherina YU
Senior Council Secretary (2) 4

Miss Meisy KWOK
Legislative Assistant (2) 6

Action

I. Issues raised at the last meeting
[LC Paper No. CB(2)400/16-17]

Arrangement for receiving public views on the Private Columbaria Bill

The Chairman said that members' views were sought on the arrangement for receiving public views on the Private Columbaria Bill vide LC Paper No. CB(2)400/16-17 issued on 13 December 2016. 27 members had replied by the deadline on 16 December 2016. Of them, 19 members suggested inviting members of the public to make only written submissions to the Bills Committee, eight members suggested inviting members of the public to make both written submissions and oral representations to the Bills Committee and no member suggested inviting members of the public to make only oral representations to the Bills Committee. The Chairman said that the Bills Committee would only invite written submissions from interested parties on the Bill. Members agreed.

II. Meeting with the Administration

[File Ref.: FH CR 2/3751/07; LC Paper Nos. CB(3)113/16-17, LS10/16-17, CB(2)345/16-17(01) to (05), CB(2)384/16-17(01), CB(2)449/16-17(01) to (03), CB(2)459/16-17(01), CB(2)1843/15-16 and CB(2)1860/15-16(01)]

Action

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. The Administration had undertaken to keep in view the implementation of the Private Columbaria Ordinance ("the Ordinance"), propose amendments to the Ordinance as and when necessary and conduct a review of the Ordinance in any event around three years after enactment.

III. Date of next meeting

4. Members noted that the next meeting would be held on Friday, 13 January 2017 at 10:45 am.

IV. Any other business

5. There being no other business, the meeting ended at 6:26 pm.

Council Business Division 2
Legislative Council Secretariat
1 March 2017

**Proceedings of the second meeting of the
Bills Committee on Private Columbaria Bill
on Tuesday, 20 December 2016, from 4:30 pm to 6:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda item I – Issues raised at the last meeting</i>			
000838-000959	Chairman	Members agreed on the arrangement for receiving public views on the Private Columbaria Bill ("the Bill").	
001000-001018	Chairman	<p>Members noted the submissions from the following deputations:</p> <p>(a) 性小眾團體 (LC Paper No. CB(2)449/16-17(02));</p> <p>(b) The Covenant of Rainbow (LC Paper No. CB(2)449/16-17(03));</p> <p>(c) Hong Kong Columbarium Merchants Association Limited (LC Paper No. CB(2)459/16-17(01));</p> <p>(d) Memorial Park Hong Kong (LC Paper No. CB(2)475/16-17(01)); and</p> <p>(e) DAB Kowloon City Branch (LC Paper No. CB(2)475/16-17(02)).</p>	
<i>Agenda item II – Meeting with the Administration</i>			
001019-003221	Chairman Administration	The Administration's briefing on its paper entitled "Key issues of Concern discussed at the Bills Committee formed under the Fifth LegCo with Committee stage amendments incorporated into the re-introduced Bill" ("this Bill") (LC Paper No. CB(2)449/16-17(01)).	
003222-004340	Chairman Mr CHAN Chi-chuen Administration	<p><u>Item 3 of LC Paper No. CB(2)449/16-17(01)</u></p> <p>The Administration's response to Mr CHAN Chi-chuen's concern regarding whether domestic premises which comprised many sub-divided flats and kept more than 10 containers of ashes in total complied with the requirement of domestic keeping of ashes under the Bill if each sub-divided flat therein kept not more than 10 containers of ashes.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p><u>Item 5 of LC Paper No. CB(2)449/16-17(01)</u></p> <p>Mr CHAN's concern that some operators of dated columbaria (i.e. pre-cut-off columbaria which had commenced operation before 1 January 1990) might overstate the number of pre-cut-off-time-sold (the cut-off time was 8:00 am on 18 June 2014) niches and his enquiry about whether the Administration would examine all agreements for the sale of interment rights ("the agreements").</p> <p>The Administration's response that it would not be practical nor feasible to examine each and every agreement. That said, information on niches (including the number of and photos on sold and occupied niches, sold but not yet occupied niches, and niches available for sale) was collected through the administrative Notification Scheme ("the Notification Scheme"). Operators of dated columbaria were required to keep the agreements and records of interment for future examination by the future Private Columbaria Licensing Board ("Licensing Board"). This would help forestall abuse of the arrangements applicable to pre-cut-off sold niches of dated columbaria seeking exemption.</p> <p>Mr CHAN's concern about the purchase of unsold niches in dated columbaria by a person or a company for the purpose of reselling such niches later and his enquiry about whether transfer of niches were allowed under the Bill. The Administration advised that to qualify for exemption, dated columbaria were not allowed to sell or let niches after the cut-off time. Exempted columbaria must cease the selling or letting of any niches after the cut-off time. There were restrictions in the Bill, if enacted, on the change of dedicated persons of pre-cut-off sold niches in exempted columbaria. As to the change of dedicated persons of sold niches in licensed columbaria, it would depend on the agreements entered into between the operators and the purchasers.</p> <p><u>Item 9 of LC Paper No. CB(2)449/16-17(01)</u></p> <p>Mr CHAN's enquiry and the Administration's response regarding whether operators of private columbaria were allowed to impose any fees or charges beyond what was agreed in an agreement, or not in accordance with any mechanism for their future revision as specified in the agreement.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
Clause-by-clause examination			
004341-004955	Chairman Administration	Examination of Part 1 - clauses 1 to 3	
004956-005807	Chairman Administration Mr CHAN Chi-chuen	<p>Examination of Part 1 - clause 4</p> <p>Enquiries of the Chairman and Mr CHAN Chi-chuen and the Administration's response regarding whether the Undertakers of Burials Regulation (Cap. 132 sub. leg. CB) specified the time limit of temporary keeping of ashes by licensed undertakers of burials.</p> <p>Mr CHAN Chi-chuen's enquiries and the Administration's response regarding whether paying worship to the deceased in the premises of licensed undertakers of burials was allowed as well as the number and locations of licensed undertakers of burials.</p> <p>Mr CHAN's view that if licensed undertakers of burials were allowed to collect management fees or storage fees, the premises concerned were in effect private columbaria which were not regulated by the Private Columbaria Ordinance ("the Ordinance").</p> <p>The Administration advised that while the Ordinance did not apply to the specified premises of licensed undertakers of burials, they would continue to be regulated by Cap. 132 sub. leg. CB. Temporary storage of ashes at the premises of an undertaker had not been allowed if the relevant application for an undertaker licence was submitted in or after December 2008. At present, there remained 81 undertakers whose licences did not forbid the temporary storage of ashes within their premises.</p> <p>The Chairman's enquiry and the Administration's response regarding the arrangements applicable to stonemasons. The Administration's explanation of the administrative arrangement that could be put in place for returning ashes which were handled by stonemasons to descendants.</p>	
005808-010032	Chairman Administration	Examination of Part 1 - clauses 5 and 6	
010033-011053	Chairman Administration Mr CHAN Chi-chuen Dr KWOK Ka-ki	<p>Examination of Part 1 - clause 7</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding regulation of</p>	

Time marker	Speaker(s)	Subject(s)	Action required
	<p>Mr LEUNG Kwok-hung ALA6</p>	<p>New Territories ("NT") small houses which were used for columbaria operation. The Administration's advice that where not permitted under lease, new territories exempted houses could apply to the Lands Department ("LandsD") for regularization in accordance with established mechanism.</p> <p>Dr KWOK Ka-ki's enquiry and the Administration's response in relation to the keeping of a large number of containers of ashes in sub-divided flats and small-size separate household units.</p> <p>Dr KWOK's view and the Administration's response on imposing a requirement on the area of household units to qualify for domestic keeping of ashes under the Bill.</p> <p>Mr LEUNG Kwok-hung's view that ashes kept in domestic premises should be confined to those of family members of the occupiers, in order to prevent domestic premises from being used as private columbaria in disguise. The Administration's response that clause 7 sought to cater for keeping ashes in domestic premises (i.e. solely or principally for residential purposes and constituting a separate household unit).</p> <p>ALA6 informed members of the concerns raised by the former Bills Committee about the keeping of synthetic materials transformed from ashes at domestic premises and the Administration's undertaking to keep in view the implementation of the Ordinance, propose amendments to the Ordinance as and when necessary, and conduct a review of the Ordinance in any event around three years after enactment.</p> <p>In response to the Chairman's enquiry, the Administration's advice that it would honour the aforesaid undertaking.</p> <p>Mr CHAN Chi-chuen's view that under the NT Small House Policy, NT small houses should be for residential use only and allowing use of NT small houses as private columbaria to apply for regularization was a deviation from the NT Small House Policy. The Administration's response that the user clause of such leases was on "non-industrial use". The relevant government departments and the Licensing Board would take into account a number of factors in considering the applications.</p>	<p>Admin (paragraph 3 of the minutes)</p>

Time marker	Speaker(s)	Subject(s)	Action required
011154-011429	Chairman Administration	Examination of Part 3 - clause 10	
011430-011959	Chairman Administration Mr CHAN Chi-chuen Mr Holden CHOW	<p>Examination of Part 3 - clause 11</p> <p>Mr CHAN Chi-chuen's enquiry and the Administration's response regarding whether a consumer committed an offence if he/she, having known that a private columbarium operated without a licence, still leased or purchased an interment right from the columbarium concerned.</p> <p>In response to Mr Holden CHOW's enquiry, the Administration advised that "tenant" and "lessee" mentioned in clause 11(1)(b) did not refer to a purchaser of an interment right but to the tenant/lessee of the columbarium premises concerned.</p>	
012000-012511	Chairman Administration Deputy Chairman ALA6	<p>Examination of Part 4 - Division 1, clauses 12 and 13</p> <p>Deputy Chairman's enquiry and ALA6's response regarding the reasons for describing the quantity of ashes by using "多少份骨灰" in the Chinese text of clause 12.</p>	
012512-012812	Chairman Administration	Examination of Part 4 - Division 1, clause 14	
012813-013945	Chairman Administration Mr Holden CHOW Deputy Chairman ALA6 Mr CHAN Chi-chuen	<p>Examination of Part 4 - Division 1, clause 15</p> <p>Mr Holden CHOW's enquiry and the Administration's response regarding the rationale of capping the validity period of a licence at 10 years but not imposing the same cap on the validity period for an exemption.</p> <p>Deputy Chairman's enquiry and the Administration's response regarding the composition, meeting intervals, the Secretariat, etc. of the Licensing Board. The Administration's explanation of Schedule 1 which concerned the Licensing Board.</p> <p>ALA6 drew members' attention to clause 15(6) which concerned the status of a specified instrument (i.e. a licence, an exemption or a temporary suspension of liability ("TSOL")) in respect of which an application for renewal or extension was made in accordance with section 14, and which expired prior to the determination by the Licensing Board of the application pending the determination of the application.</p>	

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		<p>Given that under clause 15(8), the validity period of a TSOL could be extended once upon the expiry of its three-year validity period, Mr CHAN Chi-chuen's view that the validity period of a TSOL could be six years, which in his view was too long.</p> <p>The Administration's response that clause 15(8) gave the Licensing Board the necessary flexibility to extend a TSOL more than once under exceptional circumstances. While the maximum validity period of a TSOL was three years, the Licensing Board would consider the validity period of a TSOL on a case-by-case basis and the validity period of TSOLs could be shorter than three years.</p> <p>The Chairman's remarks that the holder of a TSOL was required to take, with reasonable expedition, all necessary steps towards meeting the requirements for a licence or exemption and obtaining the issue of the licence or exemption before the expiry of the TSOL.</p>	
013946-014146	Chairman Administration	Examination of Part 4 - Division 1, clause 16	
014147-014806	Chairman Administration ALA6 Mr Holden CHOW	<p>Examination of Part 4 - Division 2, clause 17</p> <p>ALA6's advice that columbarium premises which were acquired through adverse possession as confirmed by the court did not fulfil the requirements under clause 17(1)(b).</p> <p>Mr Holden CHOW's concern that ashes kept at columbarium premises which were acquired through adverse possession as confirmed by the court might need to be disposed of as these columbaria would not be eligible to apply for a licence. The Administration's response that according to the information collected through the Notification Scheme, none of the columbarium premises were acquired through adverse possession.</p>	
014807-015229	Chairman Administration Mr CHAN Chi-chuen	<p>Examination of Part 4 - Division 2, clause 18</p> <p>The Administration's response to Mr CHAN Chi-chuen's enquiry regarding whether NT small houses were eligible for modifications under clause 18 of the Bill. The Administration's advice that clause 18 of the Bill provided for modifications of clause 17 for pre-cut-off columbaria under strictly-defined criteria.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
015230-015637	Chairman Administration	Examination of Part 4 - Division 2, clause 19	
<i>Agenda item III – Any other business</i>			
015638-015710	Chairman	Date of next meeting	

Council Business Division 2
Legislative Council Secretariat
1 March 2017