

For information
on 31 March 2017

LegCo Panel on Food Safety and Environmental Hygiene

**Supply of Niches and Related Issues
after the Enactment of the Private Columbaria Bill**

Purpose

The Second Reading debate on the Private Columbaria Bill (the Bill) will be resumed on 12 April 2017. If the Bill is passed, all private columbaria will have to obtain a licence in order to sell interment rights after the enactment date of the Private Columbaria Ordinance (the Ordinance) (the enactment date). A recent report alleges that since the private columbaria are not allowed to sell interment rights during their applications for the issue of a licence, there will be a lack of supply of private niches in the 18 months after the enactment date. Appreciating Members' concern about this allegation, this paper seeks to brief them on the projected supply of niches after the passage of the Bill, as well as the related measures and issues.

Supply of niches after the enactment of the Ordinance and alternative means of interment of ashes

(I) *Supply of niches in columbaria in non-governmental private cemeteries*

2. Non-governmental private cemeteries (including non-profit-making cemeteries managed by the Board of Management of the Chinese Permanent Cemeteries (BMCPC) and religious or ethnic bodies) have their own columbaria. In the next few years, these private cemeteries will continue to supply niches, and the estimated numbers of niches that could be provided between 2017 and 2019 are as follows:

	2017	2018	2019
Cemeteries managed by religious bodies	0	36 900 ¹	0
Cemeteries managed by BMCPC	12 600	6 000	6 300
Total	12 600	42 900	6 300

¹ Relevant niches will be sold in phases in subsequent years.

3. We, together with the Home Affairs Bureau and the BMCPC, are exploring the feasibility of constructing additional columbarium facilities in the Tseung Kwan O Chinese Permanent Cemetery.

(II) Supply of public niches

4. On the other hand, the Government has been striving to increase the supply of public niches. Under the district-based columbarium development scheme, a total of 24 potential sites have been identified in the 18 districts for columbarium development. Hitherto, we have obtained support from the relevant District Councils for 14 projects. These projects will provide around 590 000 new niches in total, which account for about two-thirds of the overall planned number of new niches.

5. Among these projects, the construction of 855 new niches at Wong Nai Chung Road in Wan Chai will be completed in 2018 and about 160 000 new niches (for allocation by phases) as well as a Garden of Remembrance (GoR) at Tsang Tsui in Tuen Mun is expected to be completed in 2019. They will be a major source of supply of public niches in the short to medium term. Other columbarium projects (e.g. the Wo Hop Shek Cemetery (Phase 1)) will be progressively completed thereafter. If all goes well (including the procedures for seeking funding from the Legislative Council (LegCo)), the estimated numbers of new public niches available for allocation in the next few years are as follows:

	Estimated minimum number of public niches available for allocation²
2018	2 105
2019	20 000
2020	42 000
2021	67 000

6. To optimise the use of land resources, we are exploring with the Architectural Services Department ways to reduce the flow of visitors during the peak periods of ancestral worship (i.e. the Ching Ming Festival and Chung Yeung Festival) through diversion of traffic arrangements, thereby alleviating the traffic problem and accommodating more niches. We

² Apart from the 24 sites, the construction of another 360 new niches at the Peng Chau Columbarium will be completed in 2017.

are studying the arrangements on advanced allocation of the niches. We will closely monitor the progress of the Tsang Tsui project and plan to kick-start the first phase allocation of niches for this project in 2018, thus allowing members of the public in need of ash interment facilities to make applications prior to the completion of the project. The proposal, if implemented, will help meet the community's demand for public niches earlier.

(III) Application for placing additional sets of ashes in niches allocated by FEHD or BMCPC

7. Meanwhile, to meet public demand for niches, the Food and Environmental Hygiene Department (FEHD) and BMCPC have adopted measures to optimise the use of existing niches. FEHD has since January 2014 removed the cap on the number of sets of ashes that may be placed in a public niche by (i) relaxing the definition of "close relative"; and (ii) allowing the public to place more than two sets of ashes in a standard niche and more than four sets in a large niche. The application process is simple and user-friendly and this option will make paying respect to the deceased more convenient. FEHD estimates that if we could make the best use of this option, as many as 181 000 more urns can be placed.

8. The Chinese Permanent Cemeteries (Amendment) Bill 2015 has been passed by LegCo. Thereafter, similar measures have been adopted by BMCPC (including broadening the definition of "relatives" for placing additional sets of ashes in its facilities, allowing subsequent interment of ashes into exhumable lots and ossuary niches, and removing the cap on the number of sets of ashes that can be placed in a niche). There are about 300 000 urn spaces in the standard niches and family niches at BMCPC's columbaria.

9. We in conjunction with the BMCPC will continue to conduct promotional and publicity activities to encourage the public to place additional urns in niches.

(IV) Short-term facilities for temporary storage of ashes

10. To assist members of the public who need to store ashes during the transitional period, the Government has actively identify venues for use as facilities for temporary storage of ashes and has made certain progress in providing an appropriate number of temporary storage spaces. In the coming two years, FEHD will increase the capacity of its temporary storage facilities for holding at least 65 000 urns. However, it must be pointed out that such temporary storage facilities should not be taken as proper niches. Since storage at these facilities is only a transitional arrangement, no paying of tribute will be allowed.

11. At present, among the licensed undertakers who are regulated under the Undertakers of Burials Regulation (Chapter 132CB), 81 of them may store ashes temporarily on the premises specified in their licences. That said, such holders of undertakers licences must not use premises not specified in their licences as their places of business. Generally speaking, they may not store ashes on a long-term basis in their places of business.

(V) *Green burial*

12. Green burials, which include scattering of ashes in GoRs or at sea, is a sustainable way of disposal of ashes. In theory, green burial has no capacity constraint³. The Government has been making sustained efforts to promote green burials by encouraging public acceptance of green burials as the preferred way to dispose of cremated ashes.

13. In 2016, FEHD handled more than 4 900 green burial cases, accounting for about 10.5% of the total number of deaths in Hong Kong (i.e. one out of ten deceased persons chose to use green burial to handle his/her ashes). This was a significant increase, as compared with about 4.6% in 2010.

14. We understand that it takes time to make green burial as the preferred choice of handling of ashes of the public. With our persistent effort, we are optimistic in gradually making a paradigm shift. Our previous effort in promoting cremation as a substitute for traditional burial bears testimony to this view. Before the 1980s, burial was the mainstream way of handling corpses and cremation was only accepted by a few. After several decades of continuous public education, society gradually subscribes to the benefits of cremation. Currently, burial and cremation constitute around 7% and 93% of the annual number of deaths respectively.

15. To enhance the promotion of green burial, FEHD has deployed additional resources to carry out the related work, including organising exhibitions, public seminars and talks, producing and broadcasting promotional videos, distributing publications, putting up posters and banners as well as collaboration with relevant non-governmental organisations. We will continue with our efforts to enhance the existing green burial facilities and services,

³ However, in terms of operation, if members of the public wish to mount plaques in memory of the deceased whose ashes were scattered in GoRs, there will be constraints relating to the location and number of plaque spaces provided in each of the GoRs. Besides, the free ferry service offered by FEHD for the scattering of ashes at sea is subject to quota limits. Yet, FEHD will continue to provide additional plaque spaces in GoRs wherever feasible, review the service capacity for the free ferry service from time to time, and consider increasing the service level should demand for the service so warrant.

including identifying suitable sites for building more GoRs of bigger size and continuing to provide free ferry service to encourage members of the public to use these facilities.

(VI) Keeping ashes at home

16. People may keep the ashes of the deceased at home according to their personal choices. It is set out in the Bill that keeping of no more than 10 containers of ashes in domestic premises is excluded from the application of the Bill. The provision should be adequate to cater for the needs of large families.

The timeline after the enactment date

17. Following the enactment of the Ordinance⁴, private columbaria are required to obtain a specified instrument (a licence, an exemption or a temporary suspension of liability (TSOL)) in order to operate. Among the three types of specified instruments mentioned above, only a private columbarium with a licence is allowed to **sell** interment rights. As far as **interment of ashes** is concerned, for pre-cut-off columbaria⁵:

- (a) during the validity period of a licence, subject to complying with the relevant conditions⁶, a licensee may inter ashes in niches;
- (b) during the validity period of an exemption, subject to complying with the relevant conditions⁷, an exemptee may inter ashes in the niches sold before the cut-off time⁸ or in the niches of religious ash pagodas specified by the Secretary for Home Affairs by notices published in the Gazette;
- (c) during the validity period of a TSOL, subject to complying with the relevant conditions, a TSOL holder may:

⁴ Private columbaria which were in operation immediately before the enactment date will enjoy a specified grace period. Private columbaria which commenced operation on or after the enactment date will not enjoy any grace period.

⁵ According to the Bill, a “pre-cut-off columbarium” means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the cut-off time.

⁶ Examples are those conditions related to the ash interment capacity.

⁷ Examples are those conditions related to the ash interment quantity, endorsed registers and change of dedicated persons.

⁸ The Bill designates 8 a.m. on 18 June 2014 as the cut-off time.

- (i) If a related licence application is pending (but no exemption application is pending): If the ashes were kept in the columbaria before the enactment date, the ashes may be interred in the relevant niches sold before the enactment date;
- (ii) If a related exemption application is pending: If the ashes were kept in the columbaria before the enactment date, the ashes may be interred in the relevant niches sold before the cut-off time.

18. Within six months after the enactment of the Ordinance, the Private Columbaria Licensing Board (the Licensing Board) will carry out the preparatory work. During the six-month period, the Licensing Board will formulate standing orders, handbooks and guidelines on its operation, and arrangements for the declaration of interest. The Licensing Board will prepare and publish the relevant guidelines, codes of practice, application forms for specified instruments, templates on agreement for the sale of niches, templates on various registers, etc.

19. Thereafter, pre-cut-off columbaria will be required to submit applications for specified instruments within the three months that follow (i.e. from the 7th month to the 9th month after the enactment of the Ordinance). Operators applying for specified instruments are required to meet the requirements on land, planning, building and right to use the premises and provide relevant proofs. While the Licensing Board is carrying out the preparatory work, the operators should prepare their applications (e.g. follow up the work on rectification/regularisation) in order to fulfil the relevant requirements of the Ordinance. Therefore, the six-month preparatory work will in practice be conducive to the smooth implementation of the Ordinance.

20. The time needed by the Licensing Board for processing the applications for specified instruments depends, to a large degree, on whether the private columbaria can timely submit the applications, whether the requirements set out by the Ordinance are being complied with and whether all the necessary documents and information are provided. For example, some private columbaria which are currently being listed in Part A⁹ of the Development Bureau's "Information on Private Columbaria" already comply with the user restrictions in the land leases, comply with the statutory town planning requirements and are not illegally occupying Government land. If these columbaria also comply with other

⁹ There were 15 private columbaria in Part A of the Development Bureau's "Information on Private Columbaria". According to the information collected under the Notification Scheme conducted in 2014, these 15 private columbaria had around 385 000 niches in total, of which there were around 60 000 niches not yet sold at that time.

requirements (including requirements related to buildings, right to use the premises, deed of mutual covenant, etc.) and, before the Licensing Board commences to receive applications, can prepare in advance the necessary documents and information for the applications, it will facilitate the prompt processing of the applications by the Licensing Board, thereby allowing a quick resumption of supply of private niches.

21. Therefore, for private columbaria which intend to apply for a licence, if they are breaching the planned use, land leases and other requirements, they should apply for planning permission or land use rezoning as soon as possible, and they should seek regularisation of the breaches of land lease conditions or the unlawful occupation of unleased land, and take the necessary steps to comply with the other relevant requirements. This will facilitate the Licensing Board to consider their licence applications promptly.

22. Upon the passage of the Bill, to facilitate operators to promptly prepare the necessary documents and information for applying for various specified instruments, we will invite the Licensing Board to consider giving priority to the publication of the application guidelines and related matters, and to publish such information through the Internet and other media. This will allow private columbaria which intend to apply for specified instruments to make early preparation. It will also organise briefing sessions for operators to equip them with a better understanding of the provisions of the Ordinance and its requirements. Also, we will invite the Licensing Board to set up a mechanism and consider, where practicable, expediting the processing of applications for specified instruments, with a view to resuming the supply of private niches as soon as possible.

23. At this stage, whether an individual private columbarium will be able to obtain a licence or an exemption in the future is uncertain. Even if a private columbarium can obtain a licence or an exemption in future, its ash interment capacity or its maximum ash interment quantity is also uncertain. Hence, the restriction imposed on sale of niches or interment of ashes by private columbaria between the enactment date and the issue of a licence or an exemption, is a prudent measure to prevent in the post-enactment period the aggravation of the scale of non-compliance of columbaria which ultimately still fail to comply with the requirements for the issue of specified instruments. This serves to protect the interests of consumers and have regard to sentiment of the nearby residents affected by operation of the columbaria.

Supporting measures

24. On the other hand, to facilitate members of the public to gather information about the licensing scheme for private columbaria, FEHD set up a dedicated website (www.rpc.gov.hk) in December 2016 to introduce to the public the major requirements under the Bill, to provide relevant information which are of interest to consumers and operators respectively, and to provide information on the various ways to handle ashes. The website has so far attracted more than 10 000 views. The website will be updated whenever necessary with a view to providing the latest information to the public and enhancing consumer protection. FEHD has also put in place a dedicated email address (rpc@fehd.gov.hk) and a fax number (2893 7683) for receiving enquiries relating to the regulation of private columbaria.

25. After passage of the Bill, FEHD will further step up its publicity and public education efforts on the licensing scheme, including broadcasting new Announcements in the Public Interest on television and radio and distributing pamphlets through various channels at various locations (specifically those channels and locations related to after-death arrangements).

Way forward

26. While the Government is making all-out efforts to increase the supply of columbarium facilities, it is not realistic to expect the supply of new niches to catch up continuously with the rising demand due to the growing population and competing demands from different types of developments on the finite supply of land in Hong Kong. We are also mindful of numerous challenges we face in seeking to build columbaria in individual districts, including topographical conditions, land use compatibility, infrastructural support, traffic and environmental implications, and last but not least, the concerns and objections of residents in the vicinity of the proposed sites.

27. In addition, under current practice, niches are seldom recycled. The cumulative effects over time will be a severe drain on our scarce land resources, to an extent even worse than residential units for the living which are recycled through generations of inhabitants.

28. Therefore, in the long run, mere reliance on the provision of new niches for handling cremated ashes is not sustainable. While it is imperative to promote green burial, at the same time, we have to consider some other measures to better utilise the resources.

Notably, the Audit Commission has urged us to consider introducing a time limit for newly allocated public niches or collecting annual management fee, and to consider the proposal of viewing failure to submit renewal applications as niches given up and to be returned. From the operational point of view, we think these suggestions are feasible and can alleviate the shortage of niches. This also helps ensure that these facilities can continue to serve the purpose for the descendants to pay tribute to their ancestors, while fostering the sustainable development of these facilities and making the most optimal uses of the niches.

29. For the first two measures, the Government consulted the Advisory Council on Food and Environmental Hygiene and collected its members' views on 24 November 2015, and will consult the relevant Working Group set up under the Council and collect its members' views in the second quarter of 2017. The Government will also proactively explore the acceptance and room for implementation of introducing a time limit for newly allocated public niches or collecting management fee. We have already begun reviewing the arrangement of the future allocation of niches and will consider the above proposals in that context. We will consult the Panel when we have concrete proposals.

Conclusion

30. After the enactment of the Ordinance, pending the Licensing Board's processing of the licence applications, all private columbaria that are not covered by a licence will not be allowed to sell niches. Despite the endeavours of the Licensing Board to process expeditiously the licence applications, our community will have to come to terms with the reality that the processing of some applications will inevitably take time.

31. Since the problems of private columbaria have been in existence for the past several decades, we will not underestimate the time and effort needed to deal with the historical legacy. Besides, the provisions of the Bill are complicated, and the scope and extent covered are deep and extensive. We will probably only have a clearer and more concrete understanding of the numerous problems and possible scenarios after the Ordinance is implemented. In this connection, we will closely monitor the implementation of the Ordinance and introduce an Amendment Bill when necessary. While we have pledged to conduct a review of the Ordinance around three years after implementation, we may have to initiate discussions with LegCo at an earlier date if there is an urgent need.

32. Members are invited to note the content of this paper and offer comments.

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