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Panel on Food Safety and Environmental Hygiene

Background brief prepared by the Legislative Council Secretariat for the meeting on 12 March 2019

Implementation of the Private Columbaria Ordinance

Purpose

This paper provides background information on the Administration's implementation of the Private Columbaria Ordinance (Cap. 630) ("PCO"), and summarizes major views and concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on relevant issues.

Background

2. PCO, which introduces a licensing scheme to regulate the operation of private columbaria, came into effect on 30 June 2017. According to the Administration, its policy objectives include ensuring private columbaria's compliance with relevant statutory and government requirements, enhancing protection of consumer interests and fostering the adoption of a sustainable mode of operation by private columbaria.

Private Columbaria Licensing Board ("PCLB")

3. Under PCO, PCLB has been set up to (a) consider and determine applications for specified instruments (including licence¹, exemption or temporary suspension of liability ("TSOL")), (b) formulate relevant guidelines, procedures and mechanisms, and (c) impose terms and conditions on the specified instruments as it thinks appropriate. In deliberating applications for

¹ Among the specified instruments, only a licence authorizes a columbarium to sell or newly let out niches.

specified instruments, PCLB takes into account all relevant factors including views regarding compliance with requirements relating to planning, land, building and fire safety, rights to use the premises, environmental protection, electricity and lift/escalator safety, management, financial management, etc.

4. According to information provided by the Administration to the Finance Committee in April 2018, at the conclusion of the application period for pre-cut-off columbaria² on 29 March 2018, PCLB has received applications for licence from 116 private columbaria and applications for all types of specified instruments from 144 private columbaria.³ As all of the applicants have not submitted some of the required supporting documents or information to prove their compliance with the application requirements, all these applications are under processing and have not yet reached the stage of submission to PCLB for determination.

Work of the Private Columbaria Affairs Office ("PCAO")

5. To support the work of PCLB, PCAO, a dedicated office, has been set up under the Food and Environmental Hygiene Department. PCAO comprises, among others, a Licensing Team and an Enforcement Team. The Licensing Team provides executive support to PCLB in discharging the latter's statutory functions relating to the handling of applications for specified instruments. The Enforcement Team undertakes enforcement work against operators of private columbaria who contravene provisions in PCO, particularly in respect of (a) sale of niches or interment rights without a licence after PCO has come into operation; (b) abscondment without properly disposing of ashes in their possession in the prescribed manner; (c) continued operation without valid specified instruments after the expiry of the grace period specified in PCO; (d) continued operation after their applications for new issue/renewal of licence, exemption and TSOL (as the case may be) have been rejected and appeals (if lodged) been dealt with; and (e) failure to comply with the terms and conditions imposed by PCLB.

² A pre-cut-off columbarium means a columbarium that was in operation, and in which ashes were interred in niches, immediately before the announcement of the Private Columbaria Bill at the cut-off time, i.e. 8:00 am on 18 June 2014.

³ Subsequently, the applications from three private columbaria were withdrawn by the applicants and the application from one private columbarium was returned to the applicant due to no concrete information. As at 22 October 2018, some 340 applications for specified instruments from a total of 140 private columbaria were being processed.

Policy initiatives to address historical legacy issues

6. On 22 November 2017, the Administration announced that taking into account the overall interests of the community, the Chief Executive in Council approved two policy initiatives⁴ to address the land premium and traffic impact assessment ("TIA") issues of pre-cut-off columbaria seeking a licence.

Initiative relating to land premium

7. The Administration has decided to extend the waiving of relevant payments for regularization in respect of pre-cut-off sold niches⁵ and pre-cut-off religious ash pagoda fulfilling certain requirements ("the waiving arrangement") from pre-cut-off columbaria eligible for an exemption in all other respects to pre-cut-off columbaria eligible for a licence in all other respects. Specifically, pre-cut-off columbaria confirmed to be eligible for a licence in all other respects may apply for (a) administratively regularizing, in respect of the pre-cut-off sold niches, breaches of relevant lease conditions and/or unlawful occupation of unleased land by way of a waiver and/or a short term tenancy ("STT"); and (b) waiving the relevant waiver fees, STT rentals and administrative fees before and during the licence period. PCLB will consider each application on a case by case basis having regard to its circumstances and merits.

Initiative relating to TIA

8. The Administration has also decided to adopt an empirical evidence approach for assessing traffic impacts when processing licence applications from pre-cut-off columbaria whose operation only involves niches sold before 30 June 2017. In other words, the departments concerned will generally not call for a TIA. All private columbaria applying for a licence under PCO will, however, be required to submit to PCLB a management plan, proposing traffic and pedestrian flow management measures which can be implemented by themselves to minimize any adverse impact of the columbarium operation on the local community.

⁴ Details of the two policy initiatives are set out in the Legislative Council Brief issued by the Food and Health Bureau on 22 November 2017 (File Ref.: FH CR 2/3751/07).

⁵ Pre-cut-off sold niches mean niches sold before the cut-off time and include (a) filled niches (i.e. with ashes already interred before the cut-off time); and (b) partially-filled or unfilled niches (i.e. with ashes to be interred after the cut-off time).

Members' concerns

9. Members' major views and concerns on issues relating to the Administration's implementation of PCO are summarized below.

Processing of applications for specified instruments

10. Concern was raised about PCAO's capacity in coping with the influx of applications for specified instruments upon the implementation of the new regulatory regime. According to the Administration, after the three-year validity period of a TSOL during which pre-cut-off columbaria should seek regularization/rectification in respect of breaches of statutory requirements, PCAO would have a clearer picture of the outstanding number of pre-cut-off columbaria seeking a licence or an exemption. Upon receipt of applications and the required documents, PCAO's Licensing Team would coordinate with relevant bureau and departments in checking individual private columbaria's compliance with various requirements and would schedule meetings for consideration of the applications.

11. Some members expressed worries that PCLB and the Town Planning Board ("TPB") might adopt a lax approach in assessing licence or planning applications from pre-cut-off private columbaria in order to avoid "catastrophic" consequences leading to the cessation of operation of private columbaria and massive displacement of interred ashes. An enquiry was raised as to whether PCLB would make known to the public the private columbaria which failed to complete the required regularization. The Administration stressed that both PCLB and TPB were independent statutory bodies each performing different functions according to its own legislation. The public should rest assured that PCLB and TPB would assess all applications in accordance with the statutory requirements and established procedures. The application results would be made available for public inspection, once available.

Policy initiatives relating to land premium and TIA

12. Many members were of the view that extending the waiving arrangement to cover niches in pre-cut-off columbaria eligible for a licence in all other respects was a "relaxation" measure at the expense of public coffers and would set a very bad precedent as if administrative measures could be introduced to relax certain regulatory requirements. Query was raised about the justifications for introducing the two policy initiatives.

13. The Administration explained that quite a number of people had purchased niches from pre-cut-off private columbaria or even interred therein

the ashes of their deceased relatives before the Government announced the introduction of the licensing regime. In contemplating the two policy initiatives, the Administration mainly took into account the overall interests of the community and the need to minimize the impact on the descendants, in particular their wish of not having the interred ashes of the deceased disturbed as far as practicable. The Administration stressed that only those pre-cut-off columbaria confirmed to be eligible for a licence in all other respects, which included more than 10 relevant requirements, might apply for waiving the relevant payments for regularization. Pre-cut-off columbaria would not automatically get a licence as a result of the policy initiatives. Each application would be considered on its own merits. TIA was not a statutory requirement. The guiding principle was whether the traffic and pedestrian flow brought by a columbarium was at an acceptable level. Private columbaria applying for a licence were required to submit a management plan detailing the traffic and pedestrian flow management arrangements for prior approval by PCLB. PCLB might impose licensing conditions to require the operators to adopt appropriate mitigation measures.

14. Concern was raised about the financial implication associated with the waiving arrangement, specifically the estimated amount of revenue forgone associated with extending the waiving of relevant payments for regularization to pre-cut-off columbaria eligible for a licence in all other respects. Information was sought on the calculation method adopted/factors and variables taken into account in the Administration's assessment of land value premium to be paid by operators of columbaria claiming to be pre-cut-off columbaria. There was a suggestion that to alleviate the financial burden on operators of pre-cut-off columbaria confirmed to be eligible for a licence, consideration might be given to requiring them to pay full market value land premium at a discounted rate (e.g. 20% to 30%) instead of waiving in whole the relevant fees and rentals.

15. According to the Administration, as the means for regularization and the terms might vary, it was not possible for the Administration to estimate the financial implications of the waiving arrangement. Taking lease modification as an example, the land premium would be assessed according to the full market value of the site at the time of its application and might vary due to the original use stated in the land lease, the location of the private columbaria and its number of niches, etc.

16. There was also a concern that operators might be enticed to provide false information to PCLB in applying for a licence, claiming that their niches were sold before the cut-off time so as to benefit from the waiving arrangement. The Administration emphasized that columbaria had to submit their applications for specified instruments with supporting documents as required by PCO, and

PCLB would scrutinize the information therein as an integral part of processing the applications. According to section 99 of PCO, a person who committed an offence of providing false or misleading information was subject to the maximum penalty of a fine of \$500,000 and imprisonment for two years. In addition, if an applicant for a specified instrument deceived the Government, thus resulting in prejudice to the Government, that person committed the offence of fraud under the Theft Ordinance (Cap. 210), the maximum penalty for which was imprisonment for 14 years.

Enforcement actions against private columbaria

17. There was a view that for private columbaria that continued to sell niches after the enactment of PCO without the specified instruments, the Administration should take stringent enforcement actions, including prosecution, against them. Information was sought on the number of inspections conducted by PCAO on private columbaria and enforcement actions taken against operators of private columbaria who contravened the provisions in PCO.

18. The Administration advised that from the enactment of PCO to end-March 2018, PCAO had conducted around 530 inspections. In early March 2018, PCAO had cracked down on a private columbarium in Hung Hom which was suspected to have newly rented out niches. PCAO would continue to take stringent enforcement actions against columbaria operating in contravention of PCO and monitor compliance with the legal requirements for implementing ash disposal procedures by private columbaria.

Latest developments

19. At the request of the Panel, the Administration will brief members on the latest progress of the implementation of PCO at the meeting of 12 March 2019. The Administration will also brief members on the arrangements for handling the displaced ashes arising from cessation of operation of private columbaria.

Relevant papers

20. A list of relevant papers on the website of the Legislative Council is in the **Appendix**.

**Relevant papers on issues relating to
the implementation of the Private Columbaria Ordinance**

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	12.12.2017 (Item IV)	<u>Agenda</u> <u>Minutes</u> Administration's follow-up paper on the implementation of the Private Columbaria Ordinance (LC Paper No. <u>CB(2)645/17-18(01)</u>)
	13.2.2018 (Item V)	<u>Agenda</u> <u>Minutes</u>
Finance Committee (special meeting)	19.4.2018	<u>Administration's replies to Members' initial written questions in examining the 2018-2019 Estimates of Expenditure (Reply Serial No. FHB(FE)112)</u>
Panel on Food Safety and Environmental Hygiene	30.4.2018 (Item I)	<u>Agenda</u> <u>Minutes</u> Administration's paper entitled "Progress Report on the Implementation of the Private Columbaria Ordinance (LC Paper No. <u>CB(2)1269/17-18(01)</u>)