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28 May 2019

Ms Joanne MAK
Clerk to the Panel on Home Affairs
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Mak,

**Panel on Home Affairs
Motion passed at the meeting on 29 April 2019**

Thank you for your letter dated 30 April 2019. With regard to the motion passed under agenda item IV “Use and management of public open space managed by the Leisure and Cultural Services Department”, our response is set out below.

1. At present, if enforcement action is taken by the Leisure and Cultural Services Department (LCSD) under section 25 of the Pleasure Ground Regulation (Cap. 132BC) (the Regulation), it has to be established that a “venue user” had been annoyed, and the venue user has to be willing and able to serve as a prosecution witness. Otherwise, LCSD cannot take enforcement action solely based on staff observation or complaints received. To address public demand for proper and effective regulation of noise nuisance in parks, we propose a legislative amendment to section 25 of the Regulation by replacing “user thereof” with “person”. Under the proposed amendment, venue users, LCSD venue staff and any other persons (including nearby residents) who are annoyed by the noise may act as prosecution witnesses in LCSD’s enforcement action, making the prosecution action more proactive.

LCSD provides staff with guidelines for monitoring and regulating noise from activities carried out by groups at outdoor leisure venues. In setting up the guidelines, reference has been made to the Noise Control Ordinance (Cap. 400) regarding the regulation for different venues, natures of activities and situation, and objective criteria are adopted as far as possible, e.g. sound measuring device is used to measure and monitor the noise level generated from activities. If the sound level is too high, venue staff will prompt the users to be mindful of the sound volume and keep it reasonably low. LCSD will make reference to the arrangements adopted by the departments concerned in monitoring and regulating noise, and seek legal advice in improving the existing guidelines. Meanwhile, LCSD will, in light of circumstances of individual prosecution cases, collect sufficient evidence as far as possible, e.g. photos and video footage taken on the spot, noise measurement records and witness statements (e.g. in what ways the witness was annoyed by the noise, duration and intensity of noise exposure, etc.), which will be used as evidence for prosecution.

Members of the public are not prohibited from tipping others in the form of “lai see” in parks by the Regulation or other legislation at present. Hence, performers who accept “lai see” from members of the public in parks are not in breach of the legislation. However, it is up to the court to adjudicate each prosecution case with regard to the circumstances of the case and evidence found. LCSD will continue to seek legal advice regarding pecuniary reward given in appreciation of singing activities.

2. At present, any person in breach of the Regulation is liable to a fine at level 1 (maximum \$2,000) and an imprisonment for 14 days on conviction. The court will determine the appropriate level of penalty taking into account the circumstances of the case. LCSD is open-minded to the suggestion of increasing the penalty level in section 25 of the Regulation or introducing new means of prosecution and will actively study it.
3. Section 32 of the Regulation empowers authorised LCSD officers to remove persons who contravene the provisions of the Regulation from the venues concerned. LCSD will seek legal advice and define clearly how venue management staff will use the power effectively for proper regulation of venues. Such action by venue management staff may lead to unnecessary confrontation between

law enforcement officers and performers as well as other persons, the department must therefore act with caution. LCSD officers will assess the actual situation at the time of enforcement and seek assistance from the Police as necessary.

LCSD had sought legal advice on the suggestion of prohibiting repeated violators of the Regulation from entering the venues concerned for a certain period of time, and was advised that it might involve complicated judicial procedures, such as filing an application to the court for an injunction, and should therefore be handled carefully. Nonetheless, LCSD will seek legal advice and consider other feasible means to step up measures against non-compliant activities in venues.

Yours sincerely,



(Ms Elania Luk)
for Secretary for Home Affairs

c.c.:

Director of Leisure & Cultural Services
[Attn: Sr Staff Offr(HQ) (Fax no: 2602 1480)]