



康樂及文化事務署
Leisure and Cultural Services Department

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本署檔號 OUR REF: (4) in L/M(1) to LCS 13/HQ 813/00
來函檔號 YOUR REF: CB2/PL/HA

3 May 2019

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

Dear Ms MAK,

**Plans of some venues of the Leisure and Cultural Services Department
not deposited in the Land Registry**

Thank you for your letter dated 13 March 2019, attaching a letter from the Hon Tanya CHAN. In response to the matter concerning plans of some venues of the Leisure and Cultural Services Department (LCSD) have not been deposited in the Land Registry (LR) raised by the Hon Tanya CHAN, we would like to give the following reply:

- (1), (2) & (3) Part X of the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) stipulates the provision, management and regulation, etc. of public pleasure grounds (PPGs). Sections 106(1) and (6) of the Ordinance provide that LCSD, as the Authority for the purposes of these two subsections, may by order set aside places for use as PPGs, and may by order amend, or add to or delete from, the Fourth Schedule. Section 106(2) of the Ordinance provides that the places specified in the Fourth Schedule shall be deemed to have been set aside under section 106(1) of the Ordinance for use as PPGs. Accordingly, when amendments to the Fourth Schedule for the addition of venues are published in the Gazette and tabled at meeting of the Legislative Council (LegCo), the venues concerned shall be deemed to have been set aside for use as PPGs. In accordance with section 106(3), the Lands Department (LandsD), as the Authority for the purpose of this

subsection, shall, as soon as possible, prepare a plan of every PPG which shall be deposited in LR according to section 106(5) of the Ordinance. Section 106 of the Ordinance is at Annex.

A PPG is defined by section 2 of the Ordinance as:

“public pleasure ground (公眾遊樂場地) means any place for the time being specified in the Fourth Schedule and delineated on any plan thereof which may, for the time being, have been deposited in accordance with the provisions of section 106(5)...”

「公眾遊樂場地 (public pleasure ground) 指附表4當其時所指明的地方，而其界限並已於當其時按照第106(5)條條文存放的有關圖則上繪明...」

LCSD has been providing, managing and regulating PPGs in accordance with Part X of the Ordinance and its subsidiary regulations. The English language text of both Part X and section 2(1) of the Ordinance relating to PPGs does not explicitly require that a plan must be deposited in LR for a venue to be used as a PPG.

Under the existing practice, whenever a PPG project is soon to be completed (regardless of whether a plan has been prepared by LandsD for the PPG), LCSD will set aside the place as PPG in accordance with section 106 of the Ordinance and kick-start, as soon as possible, the procedure of amendment to the Fourth Schedule including publication in the Gazette and tabling it at the LegCo meeting for negative vetting with a view to opening the venue for public enjoyment as soon as practicable. LCSD will request LandsD to prepare, as soon as practicable, a plan of every PPG and deposit it in LR in order to complete the deposit procedure.

LandsD will discuss with government departments concerned and other stakeholders prudently and conscientiously and clarify the specific details during the preparation of plans. Therefore, longer processing time will be needed. Besides, there may be changes to the perimeter of the sites of some PPGs due to planting of trees, traffic diversion or infrastructure projects, etc., meaning more time will be required for the completion of plan preparation.

For the above-mentioned reasons, some PPGs, the plans of which were still in the process of preparation, might not have their plans deposited in LR by the time they were opened.

(4) & (5)

It has recently come to the notice of LCSD that there are differences in the wording of the English language text and the Chinese language text of the definition of “PPG”, which might give rise to ambiguities as to whether or not a plan must be deposited in LR for

the venue to be a PPG. After seeking legal advice, it is noted that the English language text does not require that the plan has to be deposited, while the Chinese language text stipulates a plan has to be deposited. The English language text of the Ordinance, which was enacted in 1960, has been adopted as the basis for the existing practice before the enactment of the Chinese language text in 1996. Although section 10B of the Interpretation and General Clauses Ordinance (Cap. 1) stipulates that English language text and Chinese language text of an ordinance shall be equally authentic, it is the legal opinion, after taking into consideration various factors, that it would be more prudent to adopt a more restrictive approach, i.e. mandatory deposit of plans. To err on the side of caution, LCSD considers it prudent to temporarily suspend law enforcement in the venues concerned to avoid doubt until the plans for respective PPGs are deposited. While LCSD staff carry out enforcement actions at PPGs, the ordinances concerned include the Smoking (Public Health) Ordinance (Cap. 371), the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600), the Pleasure Grounds Regulation (Cap. 132BC) and the Bathing Beaches Regulation (Cap. 132E).

(6) Upon learning the legal opinion, LCSD informed its District Leisure Services Offices and the Tobacco and Alcohol Control Office under the Department of Health and asked them to temporarily suspend enforcement actions at the PPGs for which the procedure of depositing the plans in LR has not been completed. The law enforcement officers of LCSD are aware of the specific situation and the frontline staff including non-law-enforcement officers such as security guards, etc. will continue to administer advice to persons in breach of the regulations.

(7), (8) & (9) All the venues set aside as PPGs under section 106(1) of the Ordinance are included in the Fourth Schedule of the Ordinance. LCSD is working closely with LandsD and LR to speed up the deposit of plans. Priority will be accorded to those venues with higher usage and greater need for taking law enforcement actions. Deposit of the plans is under way or will be completed soon. The list of venues which have not completed the plan deposit procedure is being updated. It is anticipated that the vast majority of the outstanding plans will be deposited in LR by June 2019. To avoid causing confusion to the public or affecting operation of the venues concerned, LCSD does not intend to make public the list for the time being.

In addition, LCSD and the departments concerned have reviewed the plan deposit arrangement, strengthened inter-departmental cooperation and worked out a proper mechanism for the preparation of plans and their deposit in LR in future.

- (10) At present, government departments, when discharging their duties, may be required by the relevant legislation to deposit the prepared plans in LR. LR will arrange for the deposit of the plans submitted by the departments concerned as required by the relevant legislation and provide public access to the plans under section 21(1)(g) of the Land Registration Regulations (Cap. 128A). Members of the public can have access to all the deposited plans, including those of PPGs, at the Customer Centre of LR.
- (11) Among the LCSD's prosecution records involving the "PPGs" for which the procedure of depositing plans in LR has not been completed in the past 5 years, 21 cases involved prosecution against breaches of the Fixed Penalty (Smoking Offences) Ordinance and 14 cases of prosecution by summons involved cycling and plucking plants in parks, or bringing dogs into parks, resulting in total fines of HK\$40,550. Members of the public who have any enquiries about the fixed penalty notices issued or cases adjudicated in the past may enquire with the departments concerned in accordance with the established legal procedures. We regret that enforcement action cannot be taken at some PPGs for which the process of depositing the plan has not completed.
2. Should you have any queries regarding this letter, please contact the undersigned on 2601 8852 or Ms Pat WONG on 2601 8872.

Yours sincerely,



(Horman CHAN)
for Director of Leisure and Cultural Services

第 132 章《公眾衛生及市政條例》 - 第 106 條 公眾遊樂場地的提供

106.

公眾遊樂場地的提供

- (1) 主管當局可不時藉命令將任何地方撥作公眾遊樂場地用途，亦可藉同一項命令或其後的命令而指明該等場地或其任何部分須作的用途。
- (2) 附表 4 所指明的地方，須當作已根據第(1)款條文撥作公眾遊樂場地用途。
- (3) 主管當局須在切實可行範圍內，盡快為各公眾遊樂場地擬備圖則一份。
- (4) 凡因公眾遊樂場地的界線有所更改，或因該遊樂場地在其他方面有所變化，以致按照第(5)款條文存放的圖則不再準確，則主管當局須撤回該等如此存放的圖則，並須在切實可行範圍內，盡快為該遊樂場地擬備一份修訂圖則或新圖則。
- (5) 按照第(3)或(4)款條文擬備的各份圖則，均須存放在土地註冊處。(由 1993 年第 8 號第 2 條修訂；由 2002 年第 20 號第 5 條修訂)
- (6) 主管當局可藉命令，將附表 4 修訂、增補或刪減。

(由 1976 年第 9 號第 10 條修訂)

Cap. 132 PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE –
Section 106 Provision of public pleasure grounds

106.

Provision of public pleasure grounds

- (1) The Authority may, from time to time, by order set aside places for use as public pleasure grounds, and may by the same or any subsequent order specify the purpose for which such grounds or any part thereof shall be used.
- (2) The places specified in the Fourth Schedule shall be deemed to have been set aside under the provisions of subsection (1) for use as public pleasure grounds.
- (3) The Authority shall, as soon as practicable, prepare a plan of every public pleasure ground.
- (4) Where the boundaries of any public pleasure ground are so varied, or such pleasure ground is otherwise so changed, as to render any plan deposited in accordance with the provisions of subsection (5) no longer accurate, the Authority shall withdraw the plan so deposited and shall, as soon as practicable, prepare an amended plan or a new plan of such pleasure ground.
- (5) Every plan prepared in accordance with the provisions of subsection (3) or (4) shall be deposited in the Land Registry.
(Amended 8 of 1993 s. 2; 20 of 2002 s. 5)
- (6) The Authority may by order amend, or add to or delete from, the Fourth Schedule.

(Amended 9 of 1976 s. 10)