

Proposed Amendments to Private Columbaria Ordinance (Cap.630)

Public Consultation Document



**Environment and
Ecology Bureau**

The Government of the
Hong Kong Special Administrative Region
of the People's Republic of China



食物環境衛生署
**Food and Environmental
Hygiene Department**

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Table of Contents

	Page
Chapter 1 Introduction	2 - 3
Chapter 2 The Regulatory Regime under the Existing Ordinance and its Implementation	4 - 13
Chapter 3 Proposed Legislative Amendments	14 - 26
Chapter 4 Invitation for Comments	27 – 28
 List of Abbreviations	29
Annex Feedback Form	30 - 37

Chapter 1 Introduction

- 1.1 To tackle the problems caused by non-compliant private columbaria, the Government introduced the Private Columbaria Ordinance (Cap. 630) (the Ordinance) to establish a licensing regime in order to ensure private columbaria's compliance with statutory and government requirements, enhance protection of consumer interests, and foster adoption of a sustainable mode of operation by the industry. The Ordinance came into effect on 30 June 2017.
- 1.2 A considerable number of members of the public had purchased niches, or had ashes of their ancestors interred in private columbaria before the establishment of the regulatory regime. Hence, with the agreement of the Legislative Council (LegCo), the Ordinance apart from regulating new operators, also embraces a **pragmatic and sympathetic** approach to the regulation of private columbaria that were in operation before the cut-off time specified by the Ordinance (i.e. 8 a.m. on 18 June 2014) (collectively as “pre-cut-off columbaria”¹), so as to avert massive displacement of interred ashes, causing losses to consumers who had purchased niches from those columbaria, or giving rise to social disruption.
- 1.3 The Government has been closely monitoring the implementation of the Ordinance, which has been generally smooth since its introduction on 30 June 2017. Through the licensing regime, the Government identified private columbaria for regularisation, progressively rectified “pre-cut-off columbaria”'s violation of requirements in the past, and enhanced protection of consumer interests.

¹ “Pre-cut-off columbaria” refer to columbaria that were in operation, and in which ashes were interred in niches, immediately before the cut-off time (i.e. 8 a.m. on 18 June 2014). It was the moment when the Government first announced its proposal to establish a licencing regime regulating the operation of private columbaria.

- 1.4 The Government has reviewed the Ordinance in the light of the operational experience. It proposes to amend certain provisions of the Ordinance and enhance the implementation details, so as to achieve more effective execution of the regulatory regime on private columbaria. The Government briefed the LegCo Panel on Food Safety and Environmental Hygiene on the direction of the proposed legislative amendments in February 2024. Panel Members were generally supportive of the legislative proposal.

Chapter 2 The Regulatory Regime under the Existing Ordinance and its Implementation

(1) Regulatory framework

2.1 The Private Columbaria Licensing Board (PCLB)² is an statutory body established under the Ordinance, dedicated to regulate the operation and management of private columbaria, as well as conducting businesses so required or authorised by the Ordinance. The Private Columbaria Affairs Office (PCAO) under the Food and Environmental Hygiene Department (FEHD) provides administrative support for the PCLB and undertakes various areas of work relating to the implementation of the Ordinance (including enforcement action and ash disposal).

2.2 The Ordinance also provides for an appeal mechanism. Applicant or a holder of a specified instrument aggrieved by any decision of the PCLB or the Director of Food and Environmental Hygiene (DFEH) can lodge appeal with the Private Columbaria Appeal Board³ (PCAB), a statutory body established under the Ordinance. The decision of the PCAB on any appeal is final.

² At present, the PCLB consists of a Chairperson, a Deputy Chairperson and seven members, who are all appointed by the Chief Executive. DFEH is the Chairperson of the PCLB, which includes members from different sectors of the community, including legal, social work, engineering, surveying and accounting sectors.

³ The PCAB currently has 22 panel members. Each appeal case will be heard by a presiding officer , who are either the Chairperson or a Deputy Chairperson of the PCAB, who possessed the legal qualification as stipulated in the Ordinance; and four other PCAB panel members selected by the presiding officer. PCAB panel members come from various professional disciplines, including legal, planning, surveying, architecture, engineering, accounting, business and social work sectors.

(2) Scope of regulation

Licensing regime - specified instruments

2.3 Currently, under the Ordinance, unless the private columbarium is under the grace period⁴, a person is required to obtain specified instruments (i.e. a licence, an exemption and a temporary suspension of liability (TSOL)) in order to operate, manage or in any other way have control of a private columbarium. Otherwise, the person commits an offence and is liable on summary conviction to a maximum fine of \$2 million and imprisonment for 3 years; or on conviction on indictment to a maximum fine of \$5 million and imprisonment for 7 years.

2.4 Applicants are required to prove to the PCLB that their applications have fulfilled the requirements on relevant specified instruments. For each application, the PCLB will consult the relevant departments (including the Planning Department, the Lands Department, the Buildings Department, the Fire Services Department, the Transport Department and the Hong Kong Police Force) on its compliance with the necessary requirements; whilst taking into account the interest of the public and other relevant considerations, before determining each application. The different types of specified instruments are briefly outlined below:

Licence: Operators of “pre-cut-off columbarium” or those intending to start a new private columbarium could apply for a licence under the Ordinance. Licence applicants are required to demonstrate its fulfilment to more statutory requirements than exemption

⁴ Columbaria operating immediately before the commencement of the Ordinance are entitled to a grace period (9 months beginning on the enactment date of the Ordinance, i.e. from 30 June 2017 to 29 March 2018). If such columbaria applied for a TSOL on or before the aforesaid expiry date, the grace period would be extended until its application to TSOL is finally disposed of or withdrawn. During the grace period, the columbaria may continue to operate without a specified instrument, but the operator must not newly sell or let out niches.

applicants. Licence applicants must prove the private columbaria concerned have complied with all the requirements stipulated in the Ordinance and the requirements specified by the PCLB, which concerns planning, lands, buildings, owners' consent, management plan, fire safety, electrical and mechanical safety, environmental protection, etc. The validity period of a licence must not exceed 10 years, or the term of the land lease or tenancy of the columbarium concerned, whichever is shorter. A licence holder is allowed to newly sell or let out niches.

Exemption: Only operators of “pre-cut-off columbaria” that commenced operation before 1 January 1990 and have ceased sale of niches since the cut-off time are eligible to apply for an exemption. Exemption applicants are required to demonstrate that the “pre-cut-off columbaria” concerned have complied with the relevant requirements under the Ordinance and those specified by the PCLB including lands, building, owners' consent on the premise use, fire safety, electrical and mechanical safety, environmental protection, etc. The validity period of an exemption must not exceed the term of the land lease or tenancy of the “pre-cut-off columbarium” concerned. The exemption arrangement has embodied the principle of handling “pre-cut-off columbaria” through a pragmatic and sympathetic approach, so that the long-existing “pre-cut-off columbaria” can continue to operate in the scale as that at the cut-off time, though they could not newly sell or let out niches.

Temporary suspension of liability: Only operators who have applied for a licence and / or an exemption for their “pre-cut-off columbaria” may simultaneously apply for a TSOL. TSOL applicants are required to demonstrate that actions have been taken to regularise the land of the “pre-cut-off columbaria”, and that the “pre-cut-off columbaria” have been certified by qualified

professional as not posing any obvious or imminent danger in terms of building and fire safety. The initial validity period of a TSOL must not exceed 3 years and application for extension is permissible if necessary. It may not be extended more than once, unless under exceptional circumstances. The TSOL arrangement embodies the principle of handling “pre-cut-off columbaria” through a pragmatic and sympathetic approach by providing a grace period for “pre-cut-off columbaria”, so that they can continue to operate while actions are being taken to obtain a licence or an exemption, though they cannot newly sell or let out niches during the period.

Terms on Consumer Protection

(a) Requirements on an agreement for the sale of a niche

2.5 To tackle improper practices observed in some sale transaction of interment rights in the past, the Ordinance introduces new requirements for new agreements for the sale of a niche. That is, the agreement for the sale of a niche entered into on or after the enactment date (i.e. 30 June 2017) must be in writing and must comply with the requirements stipulated under the Ordinance, including setting out the information (i.e. details of the licence granted to the seller, land arrangements and restrictions), recommendations and essential terms (i.e. a full description of the interment right sold, a comprehensive list of all fees payable by the purchaser, and the arrangements for naming and effecting changes of a dedicated person) as prescribed in the Ordinance. Otherwise, the agreement is not enforceable by the seller against the purchaser.

(b) Ensuring Financial Soundness

2.6 To ensure that licensed private columbaria granted with licences can continue their operation during the validity periods of agreements on concluded sale of niches, and providing service and fulfilling obligations stipulated in the agreements with the consumers, the PCLB promulgated the “Financial Mechanism for Protection of Consumer Interests” in November 2018. Among other requirements, licence applicants who intend to adopt one-off payment / pre-payment methods for sale of interment right of niches are required to submit specified financial information⁵. The PCLB will consider each application in accordance with the criteria set out in the “Financial Mechanism for Protection of Consumer Interests”

⁵ If an applicant only lets out interment rights through “periodic rent” or sells interment rights through “average instalments” during the validity period of the licence (if the licence application is approved), the applicant is not required to submit the said financial information.

and impose appropriate finance-related licensing conditions. For example, if a licence holder opts to sell interment rights by full pre-payment, the PCLB will normally impose conditions requiring the licence holder to deposit 15% of all fees collected from the sale of the interment rights of niches in a dedicated account or a trust fund. Before the interment rights of all niches are sold, the licence holder is not allowed to withdraw any money from the dedicated account or the trust fund, so that upon the sale of interment rights of all niches, the private columbarium will have a basic capital reserve for its continued operation over the validity period of the said rights sold.

(c) Arrangement for cessation of the operation of a columbarium

- 2.7 The Ordinance stipulates that, regardless the possession of specified instrument by a private columbarium, operators are required to carry out the prescribed ash disposal procedures (i.e. ash disposal) stipulated by the Ordinance if they are to cease operating the private columbaria concerned. Otherwise, the operator commits an offence and is liable on summary conviction to a fine of \$2 million and imprisonment for 3 years, or on conviction on indictment, to a fine of \$5 million and imprisonment for 7 years.
- 2.8 The Ordinance also stipulates that the operator is required to issue a notice before commencing ash disposal. The notice must be published in newspapers in the manner specified by the Ordinance; posted at a conspicuous place outside the columbarium concerned; and served on each purchaser, authorised representative and any other person entered into the record kept under the Ordinance, as well as the PCLB.
- 2.9 Upon collection of the ashes of their ancestors from columbaria which have ceased operation, members of the public may make use

of the temporary ash storage facilities⁶ provided by the FEHD in Kwai Chung Crematorium and Wo Hop Shek Columbarium during the transition. Subsequently, they may consider applying to the FEHD for public niches, or purchasing or renting other private niches. They may also consider handling the ashes of their ancestors in other manners, including scattering the ashes in the gardens of remembrance under the FEHD, or scattering the ashes at sea using the ferry service provided by the FEHD, etc.

⁶ The storage period, which is extendable, is either 3, 6 or 12 months. The monthly charge is \$80. Where necessary, members of the public may use the existing facilities for worship in the columbarium near the temporary storage facility to pay their respect.

(3) Latest progress on the processing and vetting of applications for specified instruments by the PCLB

2.10 As at 31 March 2024, the PCLB has received a total of 362 applications for specified instruments from 147 private columbaria since the introduction of the afore-mentioned regulatory regime. The processing progress of the applications concerned is summarised as follows:

	Licence approved	Exemption approved	Application approved in principle	Application rejected / withdrawn	Application pending vetting
Number of private columbaria	12 ⁷	5	78 ⁸	51 ⁹	1 ¹⁰
Number of niches (approximate)	190 800	9 800	520 600	8 800	15 900

The List of Applications for Specified Instruments Received by the PCLB and the Register of Private Columbaria have been uploaded onto the dedicated website “Regulation of Private Columbaria”¹¹ for public information.

⁷ Including 10 “pre-cut-off columbaria”.

⁸ The giving of “approval-in-principle” is an administrative measure. Of the 78 private columbaria granted “approval-in-principle”, two were granted “approval-in-principle for licence application”, two granted “approval-in-principle for exemption application”, and the remaining 74 granted “approval-in-principle for TSOL application”. During the validity period of their respective “approval-in-principle”, these applicants are required to act in accordance with their action plan and timetable so as to comply with all the requirements for their licence and / or exemption.

⁹ Including 33 columbaria of which the applications were rejected and 18 columbaria of which the applications were withdrawn. These involved around 8 800 sets of ashes in total. Additionally, 36 columbaria ceased operation as they did not make any application for specified instruments after the implementation of the Ordinance. These involved around 2 900 sets of ashes in total.

¹⁰ The columbarium under application is not a pre-cut-off columbarium and has yet to meet the requirements for licence application in various aspects.

¹¹ List of Applications for Specified Instruments Received by the PCLB:
https://www.fehd.gov.hk/pclb/english/list_pc_application.php
Register of Private Columbaria:
https://www.fehd.gov.hk/pclb/english/list_pc_registration_part1.php

2.11 Generally speaking, the PCLB has made certain decisions (including granting approval / approval-in-principle or rejection) on all the applications for specified instruments in respect of pre-cut-off private columbaria. The applications for specified instruments which have been approved or approved in principle involved over 700 000 niches. For the 78 “pre-cut-off columbaria” with their applications approved in principle, even though they are still required to continue to take action so as to comply with all the requirements for their licence / exemption, they have been confirmed to be in compliance with the relevant basic requirements for building, fire, and electrical and mechanical safety. This demonstrates the effectiveness of the licensing regime in ensuring the safety of the visitors of private columbaria (including their staff and guests), and providing actual benefits for the general public.

(4) Handling of appeal cases

2.12 The number of cases handled by the PCAB mainly depends on the number of applications for specified instruments rejected and whether appeals are lodged by the rejected applicants. As at 31 March 2024, the PCAB has received a total of 16 appeals from 15 private columbaria. All appeal cases have been heard (including 9 dismissed, 4 withdrawn by the appellants, 1 not accepted for being lodged out of time, 1 struck out for ineligibility and 1 remitted to the PCLB). The written decisions for the appeal cases have been uploaded to the PCAB website¹² for the public’s viewing.

¹² List of all the written decisions issued by the PCAB:
<https://www.pcab.hk/en/case.html>

(5) Enforcement actions

2.13 The PCAO is also responsible for monitoring the operation of columbaria granted with specified instruments or approval-in-principle, enforcing the provisions of the Ordinance relevant to ash disposal, and taking law enforcement actions against illegally operated private columbaria. From the enactment of the Ordinance to 31 March 2024, the PCAO has received a total of around 590 complaints against private columbaria, including around 240 concerning suspected illegal operation of private columbaria. The PCAO has investigated these complaints, conducted about 2 800 inspections and prosecuted the operators of 11 columbaria. The operators in 10 of these cases have been convicted with a fine, leaving them with a criminal record.

Chapter 3 Proposed Legislative Amendments

3.1 After reviewing its implementation, the Government proposes to make the following major amendments to the Ordinance:

Proposal 1: Adjusting the two basic eligibility criteria for exemption, thus offering the option of applying for exemption to eligible “pre-cut-off columbaria”

Proposal 2: Amending the provisions relating to enforcement, which includes:

- (a) Increasing penalty for non-compliance with enforcement notices, so as to enhance deterrence against breach of conditions of specified instruments;
- (b) Introducing a new offence to criminalise licence holders’ sale of interment rights exceeding the “ash interment capacity” and the sale of niches/ interment of ashes in niches not covered in the approved plans, in order to protect consumer interests; and
- (c) Introducing a new offence to criminalise licence holders’ sale of interment rights when their authorisation to sell interment rights has been revoked or suspended by the PCLB to protect consumer interests

Proposal 3: Setting out explicitly the conditions to be met for the PCAB to consider new evidence submitted by appellants

Proposal 4: Stipulating that the Ordinance is not applicable to registered masons meeting specified conditions

Details of the proposed amendments are set out below.

Proposal 1: Adjusting the two basic eligibility criteria for exemption, thus offering the option of applying for exemption to eligible pre-cut-off columbaria

Current situation

3.2 As at 31 March 2024, among the 60 “pre-cut-off columbaria” that have submitted licence applications, 27 of them have not met the planning-related requirements (i.e. the relevant requirements in the Town Planning Ordinance (Cap. 131)). Among the 27 “pre-cut-off columbaria”, 24 of them did not apply for an exemption because they either failed to meet the two basic eligibility criteria for exemption or they wished to continue to sell niches, while the remaining 3 have applied for an exemption concurrently. If these 24 private columbaria eventually cannot fulfil all requirements for a licence, they will have to cease operation, triggering large-scale ash disposal and causing disturbance to the concerned ancestors and the interests of their families.

Proposed amendment

3.3 The Ordinance embraces a pragmatic and sympathetic approach to the handling of “pre-cut-off columbaria”, so to minimise the losses of the families that have purchased niches in these “pre-cut-off columbaria” and the social disruption arising from massive displacement of interred ashes. At the same time, balancing the general public’s interest, the impact of these “pre-cut-off columbaria” to their neighbourhood are to be minimised. The Government proposes to adjust the two basic eligibility criteria for exemption (as stipulated in the table below), thus offering the **option** of applying for exemption to eligible “pre-cut-off columbaria”. If these “pre-cut-off columbaria” opt to apply for an exemption and are approved with such, they may continue to operate at its current

confined scale (i.e. keeping the existing niches sold before 30 June 2017, or such already interred with ashes), averting the need for large-scale ash disposal, though **not allowed** to newly sell or let out niches.

Basic eligibility criteria	Existing criteria	Proposed criteria
Date of columbarium commenced operation	Before 1 January 1990	Before 8 a.m. on 18 June 2014 (i.e. the “cut-off time”)
Date of columbarium ceased sale of interment rights	From 8 a.m. on 18 June 2014 (i.e. the “cut-off time”)	From 30 June 2017 (i.e. enactment date of the Ordinance)

3.4 The Government proposes that the two adjusted basic eligibility criteria for exemption are only applicable to “pre-cut-off columbaria” fulfilling the following three conditions:

- (a) the applicant’s licence application is still under processing (i.e. not rejected or withdrawn voluntarily);
- (b) the columbarium under application is not situated in any zone for “Residential (Group A)” (i.e. “high-density residential development”) as defined in the Master Schedule of Notes issued by the Town Planning Board¹³ (TPB); and
- (c) as at the effective date of the proposed legislative amendments, no planning application submitted to the TPB has been rejected.

¹³ The TPB is a statutory body established under section 2 of the Town Planning Ordinance with a view to the promotion of the health, safety, convenience and general welfare of the community through the systematic preparation of plans for the lay-out of such areas of Hong Kong as the Chief Executive may direct, as well as the types of buildings suitable for erection therein.

- 3.5 The purpose of setting the aforesaid three conditions is to minimise the impact of these “pre-cut-off columbaria” on the nearby traffic, environment and the neighbourhood in general, and to demonstrate deference to town planning procedures and the TPB’s decisions. From our current preliminary assessment, among the 24 “pre-cut-off columbaria” that have not submitted exemption application, 13 “pre-cut-off columbaria” (involving a total of 36 000 sold niches) can meet the aforesaid conditions. If they opt to apply for exemption and are all approved with such, about 15 000 interred niches will not be required to be displaced, and about 21 000 sold niches may be interred with ashes in the future. Given that holders of exemption cannot newly sell or let out niches, their number of niches will be frozen as at that on the enactment date of the Ordinance (i.e. 30 June 2017). Large-scale ash disposal could be averted whilst minimising impact on the communities in the vicinity.
- 3.6 This proposal is not applicable to “pre-cut-off columbaria” currently applying for an exemption given that they have already submitted supporting documents proving their fulfillment of the two basic eligibility criteria and thus do not need such additional option.

Proposal 2: Amending the provisions relating to enforcement

(a) Increasing penalty for non-compliance with enforcement notices, so as to enhance deterrence against breach of conditions of specified instruments

Current situation

3.7 At present, when approving a specified instrument, the PCLB will impose appropriate conditions (e.g. to require the private columbarium concerned to conduct periodical inspection and certification on building and fire safety), so to ensure the private columbarium complies with all statutory and government requirements (including requirements relevant to building, fire and occupancy safety), with a view to protecting consumer interests. In case of non-compliance with the conditions of specified instruments, DFEH may issue an enforcement notice in reliance of section 64 of the Ordinance to require the holder of a specified instrument to end such contraventions, to remedy the consequences of such contraventions, and/or to prevent the recurrence of such contraventions. At present, any person failing to comply with the notice is liable on conviction to a fine at level 3 (i.e. \$10,000).

Proposed amendment

3.8 The Government considers the penalty for non-compliance with the enforcement notice is disproportionate to the benefits and consequences brought about by breaches of the conditions of the specified instruments, which may hinder the effective enforcement of the Ordinance. In view of the importance of ensuring compliance with the conditions of the specified instruments, and the need to enhance deterrence, the Government proposes to increase the penalty for non-compliance with enforcement notices, such that

the maximum penalty the Court can impose on any person committing the offence will be a fine of \$500,000 and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment¹⁴.

¹⁴ Proposed maximum penalty took reference of the offence under section 56(3) of the Ordinance in relation to illegal replacement of the name of a dedicated person contained in an endorsed register, and that under section 11 of the Ordinance in relation to illegal operation of a private columbarium.

- (b) Introducing a new offence: to criminalise licence holders’ sale of interment rights exceeding the “ash interment capacity” and the sale of niches / interment of ashes in niches not covered in the approved plans, in order to protect consumer interests**

Current situation

- 3.9 At present, section 54 of the Ordinance only requires licence holders to ensure that the number of sets of ashes **kept** is limited to the maximum number shown in the approved plan (i.e. “ash interment capacity”), or else will be liable to a fine at level 3 (i.e. \$10,000) and imprisonment for 6 months.
- 3.10 Given that many people may purchase niches in advance to prepare for the death of their family members in the future, sold niches will often be interred with ashes at a later time. As such, sale of interment rights exceeding the “ash interment capacity”, or sale of niches not covered in the approved plans by licence holders (i.e. “overselling niches”), will not immediately lead to contravention of the restriction on the number of sets of ashes interred pursuant to section 54 of the Ordinance. As the “oversold” niches are not within the scope of the licence, the agreements entered between the purchaser and the seller on these niches are unenforceable; ashes interred pursuant to these agreements may also have to be displaced, undermining the concerned consumers’ interests.

Proposed amendment

- 3.11 The Government considers that the said behaviour of “overselling” niches should be criminalised. In view of the severe damage potentially brought about to the concerned consumers, and the prospectively hefty financial gain for such licence holders, the Government proposes that the maximum penalty the Court can

impose on any person committing the offence will be a fine of \$2 million and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment¹⁵.

3.12 The Government also proposes to correspondingly increase the penalty under section 54 of the Ordinance regarding the number of sets of ashes kept exceeding the “ash interment capacity” (i.e. “over-placing” niches), to the same level as of the aforesaid new offence against “overselling” niches, in view of their similarity in nature and severity.

(c) Introducing a new offence: to criminalise licence holders’ sale of interment rights when their authorisation to sell interment rights has been revoked or suspended by the PCLB to protect consumer interests

Current situation

3.13 At present, private columbaria have to obtain authorisation from the PCLB before selling interment rights. Currently, DFEH can only issue an enforcement notice in reliance of section 64 of the Ordinance, if private columbaria continue to sell interment rights when their authorisation to sell interment rights have been revoked or suspended by the PCLB. The current maximum penalty for non-compliance with the enforcement notice is just a fine at level 3 (i.e. \$10,000).

¹⁵ Proposed maximum penalty took reference of the offence under section 11 of the Ordinance in relation to illegal operation of a private columbarium.

Proposed amendment

3.14 Agreement for sale of interment rights concluded with licence holders when its authorisation to sell interment rights has been revoked or suspended by the PCLB are not legally enforceable. In view of the severe damage potentially brought about to the interest of the concerned consumers, and the prospectively hefty financial gain for such licence holders, the Government proposes to make the sale of interment rights by licence holders when their authorisation to sell interment rights has been revoked or suspended by the PCLB a criminal offence; and the maximum penalty the Court can impose on any person committing the offence will be a fine of \$2 million and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment¹⁶.

¹⁶ Proposed maximum penalty took reference of the offence under section 11 of the Ordinance in relation to illegal operation of a private columbarium.

Proposal 3: Setting out explicitly the conditions to be met for the PCAB to consider new evidence submitted by appellants

Current situation

3.15 At present, an appeal mechanism has been provided for in the Ordinance. The PCAB is responsible for handling appeals lodged against decisions made by the PCLB or DFEH. The PCAB currently has 22 panel members. Each appeal case to be heard by an appeal panel comprising five PCAB members, and may be differently constituted.

Proposed amendment

3.16 There were instances in which an appeal panel responsible for an individual appeal considered and accepted new documents or information submitted by the appellant during the hearing. To ensure the adoption of a consistent standard in handling new evidence across appeal panels responsible for different appeal cases, and preventing applicant for specified instruments intentionally stalling submission of documents or information when making applications to the PCLB, the Government, having referenced similar practices in appeal mechanisms in other legislation and in common law, proposes to set out explicitly the conditions to be met for the PCAB to consider new evidence submitted by appellants. The proposed conditions are as follows:

- (a) the documents or information could not have been made available with reasonable efforts to the PCLB before the decision under appeal was made; and

- (b) the documents or information (if adduced) will probably have an important influence on the result of the case, though it needs not be decisive.

Proposal 4: Stipulating that the Ordinance is not applicable to registered masons meeting specified conditions

Current situation

3.17 Masons are contractors in the business of manufacturing and restoring of headstones and grave coverings, assisting families in the interment of ashes of their ancestors. During their operation (e.g. arrangement of cremation of remains after exhumation, and assisting families in interring ashes into urns), they need to handle ashes temporarily kept within their premises. Sale of interment rights are not part of masons' business. After the enactment of the Ordinance, the Government put in place administrative measures to allow masons registered with the FEHD and / or a private cemetery, and not situated in any "Residential (Group A)" zone on statutory plans, to temporarily keep ashes at their premises on the condition of their compliance with the specified conditions¹⁷.

Proposed amendment

3.18 The Government considers the relevant administrative arrangements currently in place effective in balancing the operational needs of the trade arising from their services to the general public, whilst not compromising the regulation of private columbaria under the Ordinance. Therefore, the Government proposes that reference be made to the existing exclusion arrangements for premises where ash transforming work (e.g. transferring ashes into manmade crystals) is carried out as specified in section 5 of the Ordinance, stipulating that

¹⁷ These eligible masons must comply with the following specified conditions when temporarily keeping ashes: (1) each set of ashes may not be kept at the premises of the eligible masons for more than seven calendar days, and shall be incidental to the masonry processes; (2) no interment right in respect of the masons' premises is sold; (3) paying worship and giving ritual offerings to any deceased person in the workplace of the eligible masons are not allowed; (4) a register of the delivery of ashes to and from the masons shall be kept; (5) the original receipt for cremation fee in respect of the ashes temporarily kept shall be kept for three months; and (6) the register and receipts for cremation fee shall be made available for inspection on request by FEHD staff.

the Ordinance is not applicable to eligible registered masons meeting the specified conditions, making the Government's current administrative measures regulating temporary ash0keeping by registered masons under the provisions of the Ordinance. The FEHD will continue to adopt largely the existing specified conditions for eligible registered masons to temporarily keep ashes, and will review / amend the arrangements as necessary.

Chapter 4 Invitation for Comments

- 4.1 The Government will continue to handle the regulation of “pre-cut-off columbaria” through a pragmatic and sympathetic approach, whilst enhancing the regulatory regime on private columbaria. The Government will earnestly listen to the community’s views before submitting the proposed legislative amendments to the LegCo for its scrutiny.
- 4.2 Comments on the proposed amendments to the Ordinance (which are detailed in Chapter 3) are cordially invited. A Feedback Form is provided at **Annex**. Please submit your Feedback Form by post, fax or email on or before 2 June 2024 to:

Address: Private Columbaria Affairs Office
Food and Environmental Hygiene Department
P.O. Box 80011
Cheung Sha Wan Post Office

Fax: (852) 2827 2908

E-mail: pco_review@fehd.gov.hk

For submission by post / fax, please mark “Proposed Amendments to the Private Columbaria Ordinance” on the envelope / fax copy.

- 4.3 It is voluntary for any member of the public to supply his / her personal data upon providing views on the consultation document. Any personal data provided with a submission will only be used for the purpose of this consultation exercise.
- 4.4 The submissions and personal data collected may be transferred to the relevant government bureau, departments or agencies for the purpose of this consultation exercise. The relevant parties

receiving the data are bound by such purpose in their subsequent use of such data.

- 4.5 The names and views of individuals and organisations which put forth submissions in response to the consultation document (senders) may be published for public viewing after conclusion of the consultation exercise. The Environment and Ecology Bureau and the FEHD may, either in discussion with other departments or persons, or in any subsequent report, may privately or publicly, attribute comments submitted in response to the consultation document. The Government will respect the wish of senders to remain anonymous and / or keep the views confidential in relation to all or part of a submission; but if no such wish is indicated, it will be assumed that the sender can be named and his / her views be published for public information.
- 4.6 Any sender putting forth a submission and providing personal data to the FEHD will have the right of access and correction with respect to his / her personal data provided. Any request for access to or correction of personal data should be made in writing to the FEHD (please refer to paragraph 4.2 for contact information).

List of Abbreviations

DFEH	Director of Food and Environmental Hygiene
FEHD	Food and Environmental Hygiene Department
LegCo	Legislative Council
PCAB	Private Columbaria Appeal Board
PCAO	Private Columbaria Affairs Office
PCLB	Private Columbaria Licensing Board
“pre-cut-off columbaria”	Columbaria that were in operation, and in which ashes were interred in niches, immediately before the cut-off time (i.e. 8 a.m. on 18 June 2014)
the Ordinance	Private Columbaria Ordinance (Cap. 630)
TPB	Town Planning Board
TSOL	Temporary suspension of liability

Proposed Amendments to the Private Columbaria Ordinance (Cap. 630)
Feedback Form

Part 1: Basic Information (*Optional)

Name:	
Name of organisation / company (if applicable):	
Contact number:	
Email address:	

Part 2: Consultation Questions

1.	Do you agree that the Government should continue to regulate private columbaria that were in operation before the implementation of the Ordinance (pre-cut-off columbaria) through a pragmatic and sympathetic approach, so as to avert massive displacement of interred ashes? (see paragraph 1.2 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:
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2.	Do you agree with offering the option of applying for exemption to eligible “pre-cut-off columbaria” which have only submitted licence applications; so as to avert the need for ash disposal due to their inability in fulfilling the licence requirements, the disturbance the deceased concerned, and harm to the interests of their families? (see paragraphs 3.2 – 3.6 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:
3.	Further to Question 2, do you agree that such “pre-cut-off columbaria” should fulfil specified conditions in order to be eligible to the option of applying for exemption; so to avert disturbance to the deceased and the interests of their families, whilst minimising impact on nearby traffic and environment and the neighbourhood as well as demonstrating deference to town planning procedures? (see paragraphs 3.2 – 3.6 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:

4.	Do you agree with increasing the maximum penalty for non-compliance with enforcement notices (to a fine of \$500,000 and imprisonment for 6 months on summary conviction; or a fine of \$5 million and imprisonment for 2 years on conviction on indictment) to enhance deterrence against breaches of the conditions of specified instruments? (see paragraphs 3.7 – 3.8 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:
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5.	Do you agree with introducing a new offence to prohibit licence holders' sale of interment rights exceeding the "ash interment capacity" and the sale of niches / interment of ashes in niches not covered in the approved plans (i.e. "overselling" niches), in order to protect consumer interests (with the maximum penalty for such new offences to be a fine of \$2 million and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment)? (see paragraphs 3.9 – 3.11 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:
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6.	Do you agree with correspondingly increase the maximum penalty for keeping ashes exceeding the “ash interment capacity” (i.e. “over-placing” ashes) to the same level as of “overselling” niches, i.e. a fine of \$2 million and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment, to protect consumer interests? (see paragraph 3.12 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:
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7.	Do you agree with introducing a new offence to prohibit licence holders' sale of interment rights when their authorisation to sell interment rights has been revoked or suspended by the PCLB (i.e. unlicensed sale of niches), so as to protect consumer interests (with the maximum penalty for such new offence to be a fine of \$2 million and imprisonment for 6 months on summary conviction, or a fine of \$5 million and imprisonment for 2 years on conviction on indictment)? (see paragraphs 3.13 – 3.14 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:
8.	Do you agree with setting out explicitly the conditions to be met for PCAB to consider new evidence submitted by appellants, so to prevent appellants from unjustifiably stalling the submission of documents or information when making applications to the PCLB? (see paragraphs 3.15 – 3.16 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:

9.	Do you agree that, in view of the operational needs of masons in temporarily keeping ashes, it should be stipulated that the Ordinance is not applicable to eligible masons, so to bring the Government's current administrative measures regulating the temporary ash-keeping by masons under the umbrella of the Ordinance? (see paragraphs 3.17 – 3.18 of the consultation document)	☐ Agree	☐ Disagree	Other remarks:
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Other remarks (May supplement with a separate sheet if necessary):

Please submit the Feedback Form by post, fax or email on or before 2 June 2024 to:

Address: Private Columbaria Affairs Office,
Food and Environmental Hygiene Department
P.O. Box 80011
Cheung Sha Wan Post Office

Fax: (852) 2827 2908

Email: pco_review@fehd.gov.hk

For submission by post / fax, please mark “Proposed Amendments to the Private Columbaria Ordinance” on the envelope / fax copy.