DIRECT INVESTIGATION REPORT

CONTROL OF ROADSIDE BANNERS

December 2008

Office of The Ombudsman
Hong Kong
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EXECUTIVE SUMMARY

Direct Investigation
Control of Roadside Banners

Background

Government has a Management Scheme for the Display of Roadside Non-Commercial Publicity Materials ("the Scheme"), under which Government departments, Legislative Council ("LegCo") Members, and District Councils ("DCs"), DC Members and certain non-profit making organisations may put up roadside banners at designated spots for display for specified period. This is administered by the Lands Department ("Lands D").

2. Earlier, in August 2006, we completed a preliminary study on the Scheme, examining whether appropriate measures were in place to prevent proliferation of roadside banners and to ensure their secure installation and timely removal. We have been monitoring progress since.

3. We have continued to receive complaints about unclear rules and misuse of the Scheme, e.g. some banners carrying only minor, or even no, mention of the individual or organisation allocated the banner spot, as if the spot had been “loaned out” or transferred”.

4. The Ombudsman, therefore, initiated a direct investigation to examine the Scheme in greater detail.

The Scheme

5. Under the Scheme, Lands D approves applications from organisations for displaying banners case by case, each for two calendar months less the last two days. In contrast, LegCo and DC Members are allocated spots for the entire tenure of their office. Moreover, their banners are not subject to Lands D’s pre-vetting.

6. According to Lands D, spots created under the Scheme number 21,821 in total. A breakdown of these spots is as follows:

<table>
<thead>
<tr>
<th>Allocated</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>LegCo Members (60)</td>
<td>8,096</td>
</tr>
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<td>DC Members (534)</td>
<td>5,171</td>
</tr>
</tbody>
</table>

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<td>Non-profit making organisations</td>
<td>5,109</td>
</tr>
<tr>
<td>DCs (18) and committees</td>
<td>1,117</td>
</tr>
<tr>
<td>Government departments (61)</td>
<td>2,328</td>
</tr>
</tbody>
</table>

| Total:                          | 21,821   |
7. Lands D has published Guidelines for the Scheme, which govern, *inter alia*, the approved contents of banners as follows:

<table>
<thead>
<tr>
<th>Allowed</th>
<th>Not Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Events of public interest or non-commercial activities</td>
<td>• Promotion of commodities or services at a fee or fee-paying training courses and activities</td>
</tr>
<tr>
<td>• Promotion of community services</td>
<td>• Contents in breach of the laws of Hong Kong</td>
</tr>
<tr>
<td>• Information of general interest and benefit to the public provided by LegCo and DC Members and political bodies</td>
<td>• Information of an obscene or objectionable nature</td>
</tr>
</tbody>
</table>

**Observations and Comments**

8. Roadside banners constitute a form of encroachment upon public space and may cause visual obstruction and pollution. Where they block sightline and distract motorists or wear out and come loose, they pose traffic hazard, for drivers and pedestrians. Display of such banners should, therefore, be properly monitored and controlled.

**Absence of Clear Statement of Objective**

9. The Scheme impacts on the rights of citizens to traffic safety, unimpeded movement and a pleasant environment. Sacrifice of such rights ought to be justified on grounds of public interest and the justifications should be duly promulgated. Hence, a clear statement of the objective of the Scheme is necessary to explain why there should be authorised displays and why certain individuals, organisations, kinds of activities or messages should be allocated spots for display.

**Lack of Rules to Avoid Transfer of Privilege**

10. As any individual or organisation allocated a banner spot enjoys a privilege at public expense, such privilege should not be regarded as a freely disposable proprietary right. Consequently, there should be clear rules to prohibit transfer or "loaning out", particularly a specific requirement for the individual or organisation allocated the spot to be conspicuously acknowledged on the banner.

**Loose Guidelines on Banner Contents**

11. The current Guidelines are too loosely worded to be useful public information on what is permitted for display on banners. Nor can the Guidelines adequately serve as benchmark for enforcement. For example, "events of public interest", "non-commercial activities", "promotion of community services" and "information of general interest and benefit to the public" are all wide open to interpretation and may easily result in contention. Clearer definition is called for.

**Inadequate Public Consultation**

12. Lands D had in the main consulted LegCo and DCs on the Scheme, without special regard to the fact that all LegCo and DC Members were beneficiaries of the Scheme and their views and decisions inevitably could be perceived as biased towards self-interest.
13. For proper balance of different interests, Lands D should enlist the help of the District Offices of the Home Affairs Department ("HAD") and seek views from the public at large (e.g. through open consultation or opinion survey), or from organisations representing the interests of affected parties (such as residents groups or motorists organisations) before consulting LegCo and DC Members.

Proposal Unjustifiably Shelved

14. Lands D has proposed to replace the banner spots at central dividers of roads or close to pedestrian crossings with spots posing less risk to motorists and pedestrians. The Government departments consulted raised no objection, but HAD asked that new spots be created in compensation. Lands D eventually decided not to pursue the proposal on the following grounds:

(a) The central dividers are regarded as prime sites by the users and replacements cannot be easily found.

(b) When LegCo Members were previously consulted on the Scheme, they had asked for even more banner spots. It was, therefore, unlikely that LegCo and DCs would accept the proposal.

15. We take exception to these points, particularly the assumption that LegCo and DC Members would necessarily object to an overall reduction in the number of banner spots. Surely, road safety should not be compromised for administrative convenience or political expediency. We find it unfair to Members for Lands D to assume that they would not accept the proposal, which was based on self-evident public interest. We urge Lands D to follow up our recommendation and conduct public consultation, involving HAD and the relevant policy bureaux as necessary.

Recommendations

16. In the light of the above observations, The Ombudsman recommends that the Administration take action as follows:

Lands D in conjunction with the relevant bureaux

(1) to articulate the objective of the Scheme for public information;

Lands D

(2) to revise the rules for proper administration of the Scheme, including –

(i) prohibition of transfer, "loaning out" or assignment of allocated spots;

(ii) clearly visible acknowledgement, on the banner, of the individual or organisation allocated the banner spot;

(iii) a clear indication in practical terms what contents may be allowed and what not for the banners;
Lands D with the help of HAD

(3) to seek views from the public at large or interest groups before consulting LegCo and DCs;

(4) to reconsider replacement or cancellation of the designated spots at central dividers of roads or close to pedestrian crossings.

17. Lands D generally accepted our recommendations.

Office of The Ombudsman
December 2008
INTRODUCTION

BACKGROUND

1.1 Publicity banners at roadside have for years been a feature of Hong Kong’s street scene. By nature, these banners constitute a form of encroachment upon public space and may cause visual obstruction and pollution. Where they block sightline and distract motorists or wear out and come loose, they pose traffic hazard, for drivers and pedestrians. Display of such banners should, therefore, be properly monitored and controlled.

1.2 Government has a Management Scheme for the Display of Roadside Non-commercial Publicity Materials (“the Scheme”), under which Government departments, Legislative Council (“LegCo”) Members, District Councils (“DCs”), DC Members and certain non-profit making organisations may be given approval to put up such banners for display for specified period. This is administered by the Lands Department (“Lands D”). Unauthorised banners are removed in joint operations by Lands D and the Food and Environmental Hygiene Department (“FEHD”), with the former checking whether the banners are authorised and the latter taking records and removing unauthorised banners under the Public Health and Municipal Services Ordinance (Cap 132).

\[1\] Under section 104A of the Public Health and Municipal Services Ordinance (Cap 132), the display of publicity materials without permission is prohibited. The Director of Food and Environmental Hygiene is empowered under 104C of the Ordinance to remove publicity materials which contravene section 104A.
1.3 In August 2006, The Ombudsman completed a direct investigation assessment on whether appropriate measures were in place to prevent proliferation of roadside banners and to ensure their secure installation and timely removal. On completion of the assessment, a number of suggestions were made to Lands D and FEHD, such as limiting the number of designated spots, tightening the criteria for designation of spots, imposing requirements to ensure tidiness, removing dilapidated banners in a timely manner and keeping statistics. Details are at Annex 1. We have been monitoring progress since.

1.4 Despite the above development, complaints have continued to be lodged with this Office. These have focussed on how roadside banners are used by LegCo and DC Members, summarised as follows:

(a) The banner features more than one person, with only minor coverage given to the individual or organisation allocated the banner spot.

(b) The banner is used to promote personalities affiliated to the individual or organisation allocated the banner spot (e.g. a political aide or member of the same political party), not the individual himself or herself.

(c) The banner features solely a person or persons apparently unrelated to the individual or organisation allocated the banner spot, as if the spot has been “loaned” or “assigned” to some other person or persons, possibly for some consideration.

1.5 Given the developments since our assessment in 2006 and the continuing complaints, The Ombudsman saw a need to examine the Scheme in greater detail. After preliminary inquiries and scrutiny of relevant information from Lands D, The Ombudsman informed the Director of Lands on 19 September 2008 of her decision to initiate a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap 397).
AMBIT

1.6 This investigation has focused on:

(a) the intent and purpose of the Scheme;

(b) the extent to which the rules of the Scheme accurately reflect its purpose;

(c) the effectiveness of control measures, including rules on contents of banners and prevention of misuse of banner spots;

(d) the criteria for designation of banner spots;

(e) arrangements for public consultation; and

(f) Lands D's decision not to pursue one of the proposals put to them on completion of our previous study (para. 1.3).

INVESTIGATION PROCESS

1.7 Based on the information collected through our preliminary inquiries (para. 1.5), we produced a draft investigation report, outlining our tentative observations and views, and sent it to the Director of Lands on 19 September 2008 for comments. We received written comments from Lands D on 3 November 2008 and had meetings with Lands D officers on 29 September 2008 and the Director of Lands on 2 December 2008. This final report was issued on 15 December 2008.
The Scheme

Background

2.1 Before 2003, under the then prevailing policy on display of banners, posters and bunting in public areas, only those promoting "events and exhibitions of general interest and benefit to the public" might be approved by Lands D. Examples were special functions, trade fairs and festivals. The 1980s and 90s saw the proliferation of roadside banners put up freely by all and sundry, amongst them politicians and estate agents, without due regard to traffic safety or general aesthetics. In the early 1990s, Government began to formulate measures to address the problem. Two pilot schemes to regulate roadside banners were run in June 1993 and November 1996 respectively. Following rounds of consultation in the ensuing years, the Scheme was introduced in April 2003:

<table>
<thead>
<tr>
<th>Time of Consultation</th>
<th>Bodies Consulted</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 1998 – March 1999</td>
<td>LegCo Panel on Planning, Lands and Works</td>
</tr>
<tr>
<td></td>
<td>Provisional Urban Council</td>
</tr>
<tr>
<td></td>
<td>Provisional Regional Council</td>
</tr>
<tr>
<td></td>
<td>Provisional District Boards</td>
</tr>
<tr>
<td></td>
<td>District Management Committees</td>
</tr>
<tr>
<td>June 2002 – October 2002</td>
<td>District Councils</td>
</tr>
<tr>
<td>March 2003</td>
<td>LegCo Panel on Planning, Lands and Works</td>
</tr>
</tbody>
</table>
2.2 According to Lands D’s discussion paper to the LegCo Panel on Planning, Lands and Works in March 2003, the objective of the Scheme is:

“To put in place a more efficient system for the management and processing of applications for the display of roadside non-commercial publicity materials”.

2.3 The paper gives the practical reason for introducing the Scheme, but is silent on why there should be authorised displays and why certain individuals, organisations, kinds of activities or messages should be allocated spots for display. As such spots are prime site on public streets, they are a privilege at public expense. However, the objective of the Scheme has never been clearly stated.

APPROVAL FOR DISPLAY

2.4 Beneficiaries of the Scheme are limited to non-profit making bodies, LegCo Members, DCs and DC Members as well as Government departments. LegCo and DC Members have been the major users.

2.5 The numbers of spots open for application by organisations are listed in Table 1:

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Number of Spots</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-profit making bodies</td>
<td>A minimum of 100 spots in each district</td>
</tr>
<tr>
<td>DCs and committees</td>
<td>A minimum of 30 spots for each DC and committees</td>
</tr>
<tr>
<td>Government departments</td>
<td>A minimum of 50 spots in each district</td>
</tr>
</tbody>
</table>

Table 1: Number of Spots for Organisations

Approval is given case by case, each for two calendar months less the last two days. The contents of the banners are subject to prior approval.
2.6 In contrast, LegCo and DC Members are allocated a prescribed number of designated spots for the entire tenure of their office. The numbers of spots allocated are listed in Table 2:

<table>
<thead>
<tr>
<th>LegCo/DC Member</th>
<th>Number of Spots</th>
</tr>
</thead>
<tbody>
<tr>
<td>LegCo Member from Geographical Constituency</td>
<td>50 in each DC district within his/her own Geographical Constituency²</td>
</tr>
<tr>
<td>LegCo Member from Functional Constituency</td>
<td>9 in each DC district</td>
</tr>
<tr>
<td>DC Member</td>
<td>10³ in his/her own constituency</td>
</tr>
</tbody>
</table>

No case-by-case approval is required for LegCo and DC Members. Hence, the contents of their banners are not subject to prior vetting or approval.

2.7 According to Lands D, spots created under the Scheme number 21,821 in total. A breakdown of spots allocated to LegCo and DC Members prior to the LegCo Election in September 2008 and spots available for application by organisations is in Table 3:

<table>
<thead>
<tr>
<th>Allocation</th>
<th>Number of Spots</th>
</tr>
</thead>
<tbody>
<tr>
<td>LegCo Members (60)</td>
<td>8,096</td>
</tr>
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<td>DC Members (534)</td>
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<td>2,328</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>21,821</strong></td>
</tr>
</tbody>
</table>

² With the exception of eight districts (Tai Po, Sha Tin, Sai Kung, Yuen Long, Islands, Tsuen Wan, Kwai Tsing and Wan Chai).
³ Subject to any advice of individual DCs.
DESIGNATION OF SPOTS

2.8 The locations of the spots for non-profit making bodies, DCs as well as Government departments are determined jointly by DCs, District Offices and District Lands Offices ("DLOs") under Lands D.

2.9 Spots for LegCo and DC Members have been designated in consultation with the Members themselves upon introduction of the Scheme. At the start of the tenure of their office, LegCo and DC Members can choose from the spots designated, as shown in Table 2. Competing demands are resolved by ballot conducted by the relevant DLO.

2.10 For road safety reasons, spots will not be designated at the following locations:

(a) flyovers or footbridges;

(b) within 30 metres on the traffic upstream side of a pedestrian crossing;

(c) central dividers of roads within 30 metres from road junctions or pedestrian crossings; and

(d) at the junction of a dual way road and a major road.\(^4\)

CONTENTS OF BANNERS

2.11 According to Lands D’s Implementation Guidelines ("the Guidelines") (see Annex 2) for the Scheme, banners may carry only the following contents:

(a) events of public interest or non-commercial activities (clause 7(a)(i));

(b) promotion of community services (clause 7(a)(ii)); and

\(^4\) Banner spots within a one-way street will not be subject to the 30-metre safety restriction if they do not obstruct the views of drivers getting on to a major road.
(c) information of general interest and benefit to the public provided by LegCo or DC Members and political bodies outside election periods (clause 7(a)(iii)).

2.12 The following contents are prohibited:

(a) promotion of commodities or services provided at a fee or any form of fee-paying training courses and activities, other than social service related events organised jointly by Government departments and NGOs or charitable bodies (clause 7(a)(iii));

(b) contents in breach of the laws of Hong Kong (clause 7(c)); and

(c) information of an obscene or objectionable nature (clause 7(c)). (The terms “obscene” and “objectionable” are not defined.)

2.13 However, the Guidelines expressly state that “publicity materials may contain names of other persons apart from that of the applicant” (clause 7(d)).

2.14 LegCo and DC Members are issued copies of the Guidelines before being allocated banner spots. For organisations, if the Guidelines are not attached to the application form, the organisations would normally be advised to download the Guidelines from the Lands D website, or Lands D would provide a copy by fax. The public may obtain Guidelines from DLOs or view the document on the Lands D website.

PRE-VETTING

2.15 Non-profit making organisations, DCs and Government departments are required to submit to the DLO the layout and contents of the banner with their application. LegCo and DC Members are exempt from this requirement.

SUBSEQUENT MONITORING

2.16 Lands D staff conduct regular inspections to monitor compliance with the Guidelines. 1,784, 1,727 and 1,461 regular inspections were conducted jointly
by Lands D and FEHD in 2005/06, 2006/07 and 2007/08 respectively. On discovery of non-compliance, Lands D will advise the individual or organisation allocated the banner spot to rectify the irregularities within a specified time, which ranges from a few hours to a few days, depending on the nature of irregularities. If the irregularities remain, Lands D will withdraw its approval and, without further notice, will refer the case to FEHD for removal. On discovery of banners displayed at unauthorised spots or outside the authorised period, FEHD will remove them immediately.
CASE STUDIES

CASE A

3.1 In May 2008, the media reported banner spots being “on loan” to a political body. The banners featured the leading figures of that political body rather than the individual allocated the banner spots. While bemused as to how this could have happened, the media suggested that the practice would have been permissible under the Scheme if there had been proper acknowledgement, on the banners, of the individual actually allocated the banner spots.

3.2 On our enquiry, Lands D confirmed that LegCo and DC Members are not allowed to loan out their spots under the rules of the Scheme. Hence there was no question of requiring Members to notify or apply to Lands D for permission to loan out. Subsequently, a Lands D officer further explained as follows:

(a) LegCo and DC Members are required to display their names on the banners displayed at their spots.

(b) Provided that the name of the LegCo or DC Member or organisation allocated the spot appears on the banner, Lands D would accept that there has been no breach of the rules.
CASE B

3.3 An organisation applied for spots to display banners featuring a slogan in support of a candidate in a widely reported election outside Hong Kong. Lands D refused its application on the grounds that the contents of the banners did not fall within clause 7(a) of the Guidelines, which provides that the contents of banners should include only:

(a) events of public interest or non-commercial activities;

(b) promotion of community services; or

(c) information of general interest and benefit to the public provided by LegCo or DC Members and political bodies outside election periods.

3.4 Lands D did not explain why the contents of the banners concerned were outside the three categories above. In response to our inquiry, Lands D stated that the contents of the banners did not come within the meaning of:

(a) matters of community concern; or

(b) promotion of community services.

3.5 While we accept that the contents of the banners were outside the approved category of "promotion of community services", it is arguable whether the subject matter was not an "event of public interest" or "information of general interest... to the public provided by... political bodies", and as such can be approved under the Guidelines. Our observation is that contention can be avoided if the objective of the Scheme and the Guidelines are clearer.

OBSERVATIONS

3.6 These two cases illustrate some fundamental deficiencies in the Scheme. With Case A (paras. 3.1 - 3.2), it is unsatisfactory that a crucial matter of principle (whether the spots are transferable) is not clear from the Guidelines and is left to the interpretation of individual officers administering the Scheme. This may
well result in inconsistency in implementation.

3.7 With Case B (paras. 3.3 – 3.4), as observed in paragraph 3.5, the difficulty is with the rules being too general. Essentially the objective of the Scheme has not been clearly formulated, defined or understood (para. 2.3). On record, the Scheme is “to control the display of roadside non-commercial materials”, but this does not give the policy reason why some displays are allowed while others are not and why certain individuals or organisations are to be favoured. Without a clear and proper statement of its objective, the rules of the Scheme cannot be accurately or satisfactorily interpreted.
OVERALL COMMENTS

OBJECTIVE OF THE SCHEME

4.1 The Scheme involves, and in a way impacts on, the rights of citizens to traffic safety, unimpeded movement and a pleasant environment. The banner spots provided under the Scheme are prime spaces at public locations. To this extent, individuals or organisations allocated the spots enjoy a concession at public expense. Sacrifice of such rights ought to be justified on grounds of public interest and use of the spots, properly controlled. There should be stringent rules to ensure the proper use of these valuable concessions; hence, the need for a clear statement of the objective of the Scheme and due compliance with any rules for its proper administration. It is important for Lands D staff and the public to appreciate why the spots are made available to certain individuals and organisations and why it is necessary to control the use of the spots. In this context, Lands D's definition of the objective of the Scheme (para. 2.2) is deficient. It should not be difficult for Lands D to re-establish the objective of the Scheme, taking into account its advent from major Government campaigns, such as the introduction of Representative Government, the promotion of District Administration and Community Building, as well as the developments over the years.

QUESTION OF LOANING OUT

4.2 As any individual or organisation allocated a banner spot enjoys a privilege at public expense, such privilege cannot be regarded as a proprietary right to be assigned or disposed of at will. Although Lands D confirms that in principle
allocated spots are not transferable, this has not been made explicit in the documentation for the Scheme. For clarity, Lands D should be forthright on its policy stance and there should be a rule precisely prohibiting transfer or "loaning out" in the Guidelines.

4.3 Moreover, all banners should have a conspicuous acknowledgement of the individual or organisation allocated the spot. The subject matter must be relevant to the objective of the Scheme and the individual or organisation allocated the spot acknowledged as the chief beneficiary. This would avoid total alienation of the banners from the party actually given the privilege to display them.

CONTENTS OF BANNERS

4.4 The current guidelines on contents permitted on the banners (pars. 2.11 and 2.12) are too loosely worded to be useful public information or benchmark for enforcement. For instance, “events of public interest” and “non-commercial activities” are wide open to interpretation. Likewise, “promotion of community services” and “information of general interest and benefit to the public” can be just about anything of interest to the public.

4.5 In the existing Guidelines, Lands D is already using a dual approach: a “positive list” to illustrate the scope of contents permitted for banners (para. 2.11) and a “negative list” for contents not allowed (para. 2.12). This approach is useful but needs to be revised to indicate clearly in practical terms what may be allowed and what not. Lands D should be able to do this, once the objective of the Scheme is articulated. Public consultation should also be conducted, as citizens’ rights are involved.

PUBLIC CONSULTATION

4.6 Both the design and the administration of the Scheme have to strike a balance between the interests of the public and the wishes of those who are to be allocated spots eventually. Records show that Lands D had in the main consulted LegCo and DCs on the introduction of the Scheme and on the formulation of the rules, without special regard to the fact that all LegCo and DC Members were beneficiaries of the Scheme, and inevitably could be perceived as having a bias towards
self-interest. In this regard, we note that Lands D has not employed other channels of public consultation in parallel.

4.7 Possible conflict of interests should be duly managed. For proper balance, Lands D should enlist the help of the District Offices of the Home Affairs Department ("HAD") and seek views from the public at large (e.g. through open consultation or opinion survey), or from organisations representing the interests of affected parties (such as residents groups or motorists organisations) before consulting LegCo and DC Members.

LOCATION OF DESIGNATED SPOTS

4.8 Roadside banners can come loose over time or in poor weather conditions and pose traffic hazard, especially where they are attached to central dividers of roads or close to pedestrian crossings. In this light, on completion of our study in August 2006 (para. 1.3), The Ombudsman suggested that Lands D re-examine the criteria for selection of designated spots.

4.9 Consequently, Lands D considered replacing the banner spots at central dividers of roads or close to pedestrian crossings with spots posing less risk to motorists and pedestrians. Lands D has consulted HAD, the Transport Department, the Highways Department, FEHD and the Registration & Electoral Office. Those departments raised no objection to the proposal, but HAD asked that new spots be created in compensation. Lands D eventually decided not to pursue the proposal on the following grounds:

(a) The central dividers are regarded as prime sites by the users and replacements cannot be easily found.

(b) When LegCo Members were previously consulted on the Scheme, they had asked for even more banner spots. It was, therefore, unlikely that LegCo and DCs would accept the proposal.

4.10 Lands D also stated that FEHD would step up patrol and clearance of banners which have come loose after spells of bad weather.
4.11 We appreciate Lands D’s conscientious attempt to explore alternative locations for banner spots to enhance road safety. However, we take exception to the reasons advanced (para. 4.9 (a) and (b)) for not pursuing the proposal. We are particularly surprised to see the assumption that LegCo and DC Members would necessarily object to an overall reduction in the number of banner spots. Surely, Members would not wish road safety to be compromised for administrative convenience or political expediency. It is not fair to LegCo and DC Members for Lands D to assume that they would not accept the proposal, which was based on self-evident public interest. We urge Lands D to follow up our recommendation and conduct public consultation, as suggested in paragraph 4.7 above, involving HAD and the relevant policy bureaux as necessary.
CONCLUSION

5.1 Many prominent cities in the world place much emphasis on protecting the aesthetics of their public space. An attractive cityscape can contribute to economic benefits and better quality of life. Proliferation of roadside banners, often dirty and tatty, is widely regarded to be detrimental to the outlook of a city. Furthermore, many city authorities spare no effort to guard against the traffic hazard posed by roadside banners. As for Hong Kong, Government has set its goal to promote our city as Asia’s world city. To justify this title of pride, it should set up and enforce stringent rules to manage and control roadside banners, to preserve the aesthetics of our public space particularly in central locations.

5.2 Government has in place the Scheme since April 2003 to regulate the display of roadside banners. However, the following deficiencies are evident in the Scheme:

(a) A clear statement of its objective is absent (para. 4.1).

(b) The Scheme lacks a rule to ensure that the privilege to display banners in public space cannot be freely assigned or disposed of (para. 4.2).
(c) The current guidelines on permitted contents of banners are too loosely worded (para. 4.4).

(d) The views of the public at large have not been given due weight in the design and administration of the Scheme (para. 4.6).

(e) The proposal to replace designated spots at central dividers of roads or close to pedestrian crossings has been unjustifiably shelved (paras. 4.9 – 4.11).

5.3 Nonetheless, we believe that these can all be addressed and should be rectified.

RECOMMENDATIONS

5.4 In the light of our observations, The Ombudsman recommends that the Administration take action as follows:

Lands D in conjunction with the relevant bureaux

(1) to articulate the objective of the Scheme for public information (paras. 2.3 and 4.1);

Lands D

(2) to revise the rules for proper administration of the Scheme, including --

(i) prohibition of transfer, “loaning out” or assignment of allocated spots (para. 4.2);

(ii) clearly visible acknowledgement, on the banner, of the individual or organisation allocated the banner spot. The display must be relevant to the objective of the Scheme and the individual or organisation allocated the spot should be the chief beneficiary of the display
(para. 4.3); and

(iii) a clear indication in practical terms what contents may be allowed and what not for the banners (para. 4.5);

Lands D with the help of HAD

(3) to seek views from the public at large or interest groups before consulting LegCo and DCs (para. 4.7); and

(4) to reconsider replacement or cancellation of the designated spots at central dividers of roads or close to pedestrian crossings (para. 4.11).

5.5 Lands D generally accepted the above recommendations.

ACKNOWLEDGEMENT

5.6 The Ombudsman thanks the Director of Lands and her staff for assistance throughout this investigation.

Office of The Ombudsman
Ref. OMB/DI/177
December 2008
ANNEXES
Summary of Observations and Suggestions in the Direct Investigation Assessment on Management of Non-Commercial Publicity Materials on Roadside August 2006

Observations and Opinions

(a) The absence of a limit on the number of designated spots might breed proliferation.

(b) The effectiveness of written warnings issued by FEHD against dilapidated displays was doubtful.

(c) The long duration of display and adverse weather would necessitate imposing requirements for the choice of materials and the maintenance of the displays.

(d) Firmer and more frequent prosecution and summonses are necessary for greater deterrent.

(e) Separate sets of statistics on removal of commercial and non-commercial publicity materials should be maintained for better management and assessment of the situation.

(f) The amount of costs recovered was far too small for the resources and staff efforts involved.
Suggestions

The Ombudsman recommended that Lands D and FEHD as appropriate should:

(a) consider setting a cap on the number of designated spots for non-commercial displays;

(b) re-examine the criteria for selection of designated spots;

(c) consider imposing requirements for the use of durable or standardised materials for displays;

(d) introduce a provision to require proper maintenance of displays;

(e) include dilapidated displays as targets for removal in joint operations;

(f) step up removal of dilapidated displays after spells of adverse weather;

(g) maintain separate statistics for removal and cost recovery actions;

(h) step up efforts for cost recovery; and

(i) reconsider the practice for summonses and prosecutions.
Management Scheme for the Display of Roadside Non-commercial Publicity Materials
Implementation Guidelines

Annex 2
(para. 2.11)

Members of the Legislative Council (LegCo) and District Councils (DCs) can choose designated spots that will not affect traffic safety and streetscape for the display of their publicity materials. Other users, i.e. government departments and non-profit making organizations, designated spots are determined jointly by the DCs, District Offices (DOs) and District Lands Offices (DLOs).

(a) LegCo Members
Each LegCo Member from Geographical Constituencies (GC) can choose 50 designated spots in each of the DC districts within his/her own GC. For Functional Constituencies (FCs) and Election Committee (EC), each Member may choose 9 designated spots in each of the 18 DC districts. Members shall distribute their designated spots evenly among the DC districts. With the exception of some Members from FCs with special needs, Members may exceed their aforesaid quota by up to two spots in a DC district provided that the overall total number of their designated spots is not exceeded. Annual balloting of designated spots will be organised by DLO.

(b) DC Members
Subject to any advice of individual DCs to the DLO, each DC Member may select 10 designated spots in his/her own constituency.

(c) When there are competing applications for designated spots, a ballot will be conducted by the DLO to determine the successful applicant. All applicants will be invited to witness the balloting process.

(d) When designated spots are not taken up by LegCo or DC Members, they will be transferred to the pool for other users, i.e. government departments and non-profit making organizations. These Members may select designated spots from the pool when they need them in future.

(e) Other users

(i) Each DC and its committees may take up not less than 30 designated spots within the district.

(ii) Government Departments including DOs may take up not less than 50 designated spots per district within the

With the exception of eight districts (Tai Po, Sha Tin, Sai Kung, Yuen Long, Islands, Tsuen Wan, Kwai Tsing and Wanchai)
(iii) 每區至少有 100 個指定展示點供非牟利組織使用，以供展示以該區居民為對象的宣傳品。非牟利組織包括由政府資助或根據《稅務條例》第 88 條獲豁免徵稅的非政府組織及慈善團體，根據《社團條例》(第 151 條)登記的組織，根據《職工會條例》(第 332 條)及《職工會登記規例》(第 332A 條)登記的職工會及合法註冊的團體。

(iv) 每次獲批准的申請團體最多可獲分配 5 個展示點。

(i) 地政處協同民政事務署及區議會，根據區內可用的指定展示點數目，分配展示點給各類別使用者。

給予上文第 2(a)及(b)段類別申請人的批准期，一般涵蓋其在有關議會的離職任期。至於上文第 2(e)段類別申請人的批准期，則為兩個整月，惟不包括最後兩天。在不影響其他申請者的利益及任何損失的原則下，延長展示期的申請可能獲得批准。

宣傳品的高度不得超過 1 米，長度不得超過 2.5 米。展示有關規格的說明圖則，載於圖一。

![Figure 1. Roadside Banner/Board Specifications](image)

在宣傳横額/牌板右上角的核准展示期的字體不得小於 2.5 厘米 x 2.5 厘米。

宣傳品可面向行人路及行車道。惟高速公路旁展示的宣傳品只可面向行人路；同一位置上分別面向行人路及行車道的宣傳品，會作佔用兩個指定展示點計算。

為交通安全起見，指定展示點一般不可位於下列地方：

(a) 行車或行人天橋上；
(b) 政府建造行人過路處，即號控控制過路處、斑馬線，或行人輔助線的交通上游 30 米距離之內；
(c) 交通交匯點及行人過路處 30 米內的路中心分

18 districts.

(iii) For non-profit making bodies, there will be a minimum of 100 designated spots per district for the display of publicity materials serving the local community. Non-profit making bodies include non-governmental organisations (NGOs) and charitable bodies either subvented by government or exempted from paying tax under Section 88 of the Inland Revenue Ordinance, organisations registered under Society Ordinance Cap. 151, trade unions registered under Trade Union Ordinance Cap. 332 and Trade Union Registration Regulations Cap. 332A, and legally registered bodies.

(iv) Each successful applicant will be allocated a maximum of 5 spots.

(f) The DLOs will co-ordinate with DOs and DCs on the number of spots to be allocated to the different users with reference to the number of designated spots available in the district.

**Terms**

Approval given to applicants under paragraph 2(a) and (b) above will normally cover the tenure of their term with their Councils concerned. The approval under paragraph 2(e) above will cover a display period of two calendar months less the last 2 days. Applications for extension of display periods may be granted provided that there is no prejudice to other applicants.

**Size of Publicity Materials**

The size of the publicity materials to be displayed shall not exceed 1 metre in height and 2.5 metres in length. An illustrative plan showing the specifications is at Figure 1.

Each character of the approval number and display period at the right-hand corner of the banner/board must not be smaller than 2.5 cm x 2.5 cm.

Publicity materials will be allowed to face both the pavement and the roadway. However, if displayed alongside an expressway, publicity materials will only be allowed to face the pavement. Publicity materials facing both the pavement and the roadway will be counted as two designated spots.

**Road Safety**

For road safety purposes, designated spots will not be located:

(a) on flyovers or footbridges;
(b) within 30 metres on the traffic upstream side of government built pedestrian crossings including signal-controlled crossing, zebra crossings or cautionary crossing;
(c) on central divider of roads within 30 metres from road...
(d) at the junction of a dual way road and a major road. But designated spots within a one-way street will not be subject to the 30-metre safety restriction if they do not obstruct the views of drivers getting on to a major road.

A plan illustrating the 30-metre safety zone is in Figure II.

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**Figure II. Illustration of 30m Safety Zone**

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(a) The content of publicity materials should include only:

(i) events of public interest or non-commercial activities;

(ii) promotion of community services; and

(iii) information of general interest and benefit to the public provided by LegCo/DC Members and political bodies outside election periods. In principle, the information must not include the promotion of any commodities or services provided at a fee or any form of fee paying training courses and activities. However, fee paying or non-fee paying social service related events organized jointly by government departments and NGOs/charitable bodies will not be restricted.

(b) Publicity materials containing names and logos of commercial firms or non-profit making bodies such as the Community Chest sponsoring non-profit making public activities are subject to the prior approval of the District Lands Officer and the total size of the names and logos of the sponsors shall not be larger than one tenth of the area of the publicity material.

(c) The contents of the publicity materials to be displayed shall be in compliance with the laws of the Hong Kong Special Administrative Region. No publicity materials of an obscene or objectionable nature shall be displayed.

(d) Publicity materials may contain names of other persons apart from that of the applicant.

(e) The approval of applications does not imply the Government of the Hong Kong Special Administrative Region or its officers approve the contents of the publicity materials.

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**Procedures for Applications**

(a) Duly completed applications shall be submitted to the relevant DLO no later than one month before the applicant’s intended display period. The DLO cannot guarantee approval of the application by its intended display date if the application
(b) Designated spots for applications by NGOs and charitable bodies will be divided into groups. Each group consists of 5 different designated spots, located in various parts of the district to cater for the needs of such applications.

(c) All applicants will be notified of the results in writing. No fees will be charged for applications.

(d) Applications and approvals for display of publicity materials will be temporarily suspended or revoked during election periods.

(a) Each piece of publicity material to be displayed will be required to bear on its top right hand corner the approval number and the approval period with digits of not smaller than 2.5cm x 2.5cm in size. The materials must be displayed at its chosen/allocated designated spot and shall be firmly and separately fastened so that they will not dangle in the wind or cause obstruction to pedestrians and vehicular traffic.

(b) The content of publicity materials must be the same as that described in the application form. Subject to the written consent of the District Lands Officer, an applicant may alter the content of his/her publicity materials.

(c) The use of wire and nail for fixing the publicity materials onto any highway structure, railing, barrier, fence, post or any other street furniture is strictly prohibited.

(d) The applicant is responsible for the publicity materials and the contents thereof and agrees to indemnify and keep indemnified the Government of the Hong Kong Special Administrative Region and any of its officers against all liabilities, costs, expenses, actions, proceedings, claims and demands arising out of or in connection with the permission granted by the District Lands Officer for the display of the publicity materials.

(e) No commercial advertisements shall be permitted.

(f) Upon expiry of the approved period of display, the publicity materials shall be removed immediately by the applicants. Any publicity materials not so removed will be cleared and disposed of by the Director of Food and Environmental Hygiene (DFEH), who will also take legal action and claim removal expenses against the applicant concerned.

(g) DFEH will remove publicity materials displayed outside the designated spots or those which obstruct public access and its repair and improvement works. DFEH will take legal action and claim removal expenses against the applicant concerned.

(h) Publicity materials which are unauthorized or affect emergency repair works shall be removed without notification. Unauthorized publicity materials will not be returned to the owners. DFEH may take legal action and claim removal expenses against owner concerned.