

CHAPTER 9

ELECTIONEERING AT THE LIVING OR WORKING PLACES OF ELECTORS, PREMISES OF ORGANISATIONS TO WHICH ELECTORS BELONG AND BUILDINGS WHICH ELECTORS FREQUENT

PART I : GENERAL

9.1 There are occasions when candidates may wish to target their electioneering activities at an individual elector or a group of electors at:

- (a) his/their living/working place(s);
- (b) the premises of the organisation(s) to which the elector(s) belong;
or
- (c) the building(s) which the elector(s) frequent.

These electioneering activities include visits to, personal contact with people, using amplifying devices to advertise in the common parts of the building, display or distribution of EAs and holding of election meetings at, the places mentioned above. **Appendix F** gives some kind of reference as to what activity is to be regarded as an electioneering activity. This chapter explains the general guidelines to be observed by candidates in conducting electioneering activities, the rights of all concerned and appeals to the electors, the management bodies of the organisations to which the electors belong and the management bodies of the buildings which the electors frequent to **provide fair and equal treatment** to all candidates so as to ensure that elections are conducted fairly. *[Amended in October 2007]*

9.2 Candidates are reminded that different organisations may have their own guidelines to allow or disallow the conduct of electioneering activities on the premises under their management. To ensure the smooth conduct of electioneering activities in public or private places, it is always desirable for candidates to consult the relevant authorities or management in advance and to obtain permission from them for the conduct of electioneering activities in the places within their jurisdiction, if required. *[Added in October 2007]*

9.3 The general guidelines to be observed for conducting electioneering activities at the living and working places of electors, premises of organisations to which electors belong and buildings which electors frequent are set out in Part III below. The specific guidelines to be observed for conducting electioneering activities in the premises managed by the Housing Department and the Hong Kong Housing Society are set out in **Appendix G**. *[Added in October 2007]*

9.4 For the purpose of ensuring fair treatment and equal opportunity of access to all candidates in conducting electioneering activities and to avoid causing undue disturbance to the public, Part IV below provides the owners/management of premises and organisations with some guidelines in handling applications for conducting electioneering activities in the premises under their control. *[Added in October 2007]*

PART II : RIGHTS OF TENANTS AND OWNERS

Tenant's Right - His House, Flat, Office or Factory

9.5 The tenant who has exclusive possession of a house, flat, office

or factory, and not the owner, has the right to allow or deny access by anyone to the place.

Owners' Right - the Common Parts

9.6 The **common parts** of a building (those parts to which exclusive rights of use or occupation do not belong to a particular owner or tenant) are usually under the control and management of the owners of the various units in the building. Where there is an owners' corporation of the building incorporated under the former Multi-storey Buildings (Owners Incorporation) Ordinance or the present Building Management Ordinance (Cap 344), the control and management of the common parts are exercised by the owners' corporation representing all the owners of the building.

9.7 The carrying out of the powers and duties and the acts of an owners' corporation do not affect the rights of the tenants of the individual flats, offices or factories in the building except in relation to matters concerning the common parts. Candidates and tenants should note that as **a tenant** has exclusive possession of the unit that he occupies, he **has the right to invite anyone to visit his unit for any lawful purpose**, including electioneering, but he has no right to allow the invitee to approach other tenants' units, such as knocking on other people's doors, or to do anything in the common parts of the building, except for accessing and leaving his unit or for the purposes allowed by the owners.

Owners' Committees

9.8 In some buildings, no owners' corporation has been established, but instead an owners' committee is formed. While an owners' committee generally operates in the same manner as an owners' corporation, its powers vis-à-vis the rights of the individual owners are not standardised and may differ from case to case.

Management Companies

9.9 Very often, the management of the common parts of a building has been delegated by the owners or owners' corporation or owners' committee to a management company. Management companies are only managing the common parts on behalf of the owners and unless specifically empowered to do so, have no independent right or power to decide whether electioneering by candidates in the common parts should or should not be allowed.

Tenants' Associations, Residents' Associations, Mutual Aid Committees

9.10 Sometimes there are tenants' associations or residents' associations or mutual aid committees representing tenants' interests in buildings. As against the owners, they have no right to control or manage the common parts. If they are given the authority by the owners, then they are entitled to control and manage the common parts on behalf of the owners.

PART III : GUIDELINES TO BE OBSERVED BY CANDIDATES IN THE CONDUCT OF ELECTIONEERING ACTIVITIES

Visits to Living and Working Places of Electors

9.11 Candidates should note that electors have the right to allow or deny access by anyone, including the candidates, to their own living or working places. In other words, electors are free to invite, or accept the request from, a particular candidate(s), but not the others, to visit them at their living or working places.

9.12 However, access to a private office may require the approval of the management of the office building or the companies which employ the electors, and such management when making a decision should have due regard to the fair and equal treatment principle mentioned in Part IV below. In conducting electioneering activities at the common parts of the living or working places of electors, candidates should observe the general guidelines set out in paras. 9.15 to 9.21 below. *[Added in October 2007]*

9.13 Any government offices, which are working places of electors, will be treated in the same manner as the premises referred to in this chapter. Government offices may allow or disallow electioneering activities as they wish, but such decision should comply with the fair and equal treatment principle mentioned in Part IV below. *[Amended in October 2007]*

9.14 Due to security reasons, arrangements will not be made to facilitate in-person canvassing activities in a prison or the premises of a law enforcement agency. A visitor, who visits a prison or the premises of a law enforcement agency for a business or official purpose, is not allowed to canvass for votes. This is to ensure that such a visitor will not have an advantage over other persons who cannot make the visit. A person, who canvasses for votes during the aforesaid visit, commits an offence punishable with a fine at level 2 (up to \$5,000) and imprisonment for up to 3 months [s 90A of the EAC (EP) (LC) Reg]. *[Added in January 2010]*

Respect for the Decision and Privacy

9.15 After a candidate/GC list has been notified of the decision relating to electioneering, he should ensure that he and his supporters comply with the decision and should not avail himself of or obtain any unfair advantage over any other candidate/GC list. *[Amended in October 2007]*

9.16 If a decision to disallow electioneering in an organisation or a

building has been made, the candidate or his followers should conduct no electioneering activity in such places. If the candidate concerned acts against the decision of the organisation or building and electioneers in whatever manner, then he commits trespass and the organisation or building management can simply stop him from doing the contravening act or carry out the decision to exclude the candidates concerned. If the candidate refuses to leave, it would be wise in such circumstances for the organisation or building management, as the case may be, to report the matter to the Police in the first instance and then to the EAC or its Complaints Committee which may publish a **reprimand** or **censure** against the candidate concerned. *[Amended in October 2007]*

9.17 A candidate and his supporters should respect the decisions of the organisation or building management, and it is unwise to enter into **arguments** with members of the organisation or the building residents who obstruct the candidate's electioneering inside the premises of the organisation or the building. Such arguments may affect the candidate's reputation or image with members of the organisation or the residents of the building. Any dissatisfaction with the decision or act of the organisation or the building should more properly be made a subject of a complaint as soon as possible to the EAC or its Complaints Committee which will decide whether the decision or act is fair or unfair. *[Amended in October 2007]*

9.18 **Privacy of the electors should be respected.** A guidance note on personal data privacy in respect of electioneering activities, prepared by the Office of the Privacy Commissioner for Personal Data, is at **Appendix H**. It serves as a general reference on compliance with the requirements of the Personal Data (Privacy) Ordinance (Cap 486) ("PD (P) O") in relation to electioneering activities that may involve the collection and use of personal data of an individual. Candidates are supplied by the REO with an extract of the Final Register which contains the name, gender, and residential address of electors of the relevant constituency, but not their telephone numbers. Some members of the public do not like or detest being called over the **telephone**,

the **entrance intercom system** and some do not like their names being called out aloud. Many electors consider canvassing messages sent to them through **short message service (SMS)** annoying. Their disapproval may be reflected in their choice of candidates on the polling day. It is therefore unwise to telephone or send messages by SMS to electors who find such approaches objectionable or to act in any other way that may antagonise them. As a matter of good practice, candidates and their supporters should maintain a list of electors that they know finding such electioneering telephone calls or messages or visits objectionable and avoid approaching these electors again. On the other hand, electors who receive the objectionable telephone calls or messages can just disconnect them. If the caller or sender does not desist from calling or sending messages and causes a nuisance, the elector should report the matter as soon as possible to the **Police** who may take action against the caller or sender. *[Amended in October 2007 and July 2008]*

9.19 Some candidates or their supporters may use **loud-hailers** to assist their campaign. They should exercise restraint in the use of loud-hailers so as not to create a nuisance to the persons in the vicinity, including those who live in the buildings nearby. Candidates should **NOT** use loudspeakers in electioneering **between 9 pm and 9 am**. If the EAC comes to know that a candidate/GC list has breached the time restriction, it may make a reprimand or censure against the candidate/GC list. Excessive noise will amount to an offence and the Police may be called. Anyway, it is unwise to create a nuisance through the use of loud-hailers, for the annoyance of the electors will obviously be reflected in their choice of candidate. [See also Chapter 12 on “Use of Sound Amplifying Device and Vehicles”.] *[Amended in October 2007]*

9.20 Canvassing through the use of the **entrance intercom system** in a building is prohibited unless it is expressly allowed by the building management. *[Amended in October 2007 and July 2008]*

Identification of Canvassers

9.21 For security reasons and for prevention of abuse, the EAC advises that each candidate should provide some forms of identification to his canvassers for them to enter the premises of an organisation or a building for electioneering purposes. The EAC suggests that the candidate should devise an authenticated identification document containing the name and photograph of his canvasser who should produce his identification document together with his identity card for inspection to gain entry into the premises of an organisation or a building. Candidates should note that the production costs of this kind of identification document will be counted as election expenses.

[Amended in October 2007]

PART IV: GUIDELINES TO BE OBSERVED BY OWNERS, MANAGEMENT AND ORGANISATIONS FOR HANDLING APPLICATIONS FOR CONDUCT OF ELECTIONEERING ACTIVITIES ON THE PREMISES WITHIN THEIR JURISDICTION

Electioneering at Premises of Organisations to which Electors Belong and Buildings which Electors Frequent

9.22 The premises of the organisations to which the electors belong and the buildings which electors frequent usually do not belong to a particular elector or group of electors. They are usually under the control of the management bodies of the organisations or the buildings concerned.

9.23 On the polling day or even quite some time before, candidates and their supporters may wish to carry out canvassing or electioneering

activities at the premises mentioned above. Such activities mainly consist of the following:

- (a) distribution of election leaflets or advertisements by delivering them into the flats themselves, or into mail boxes of the flats, or placing them in the common parts of the building for collection, or handing them out to residents or people in the common parts of the building (but not distribution by post which is not subject to the control of the private premises);
- (b) display of posters, banners, placards, boards and any other EAs, etc at any of the places within the common parts of the building;

NOTE :

Candidates who are allowed to display or distribute EAs at the premises mentioned above must comply with the guidelines set out in Chapter 8 : Election Advertisements. *[Amended in October 2007]*

- (c) personal contact with people or using amplifying devices to advertise in the common parts of the building; and
- (d) household or home visits to occupiers of flats.

9.24 **A tenant's right to invite lawful visitors to his own flat or office or factory cannot be lawfully restrained by any decision made by the owners or owners' corporation.** If he invites a candidate and his supporters into his own place, the owners or owners' corporation have no right to stop or obstruct it.

Decision to be Made at a Meeting with Tenants

9.25 During election time, there may be tenants wishing to entertain the approaches by candidates and their followers, but different tenants may invite different candidates to their units, and there may be arguments as to which candidate should be allowed to electioneer in the building. It is therefore advisable for owners or owners' corporations to make a decision on whether to allow candidates and their followers to conduct electioneering activities in the building, so that arguments relating to who is allowed and who is not allowed to do so will be resolved for the benefit of all concerned. It is also advisable for owners or owners' corporations to invite all the tenants to attend the meeting held for discussing this matter so that tenants' views will be heard before any decision to allow or deny electioneering activities in the building is taken.

9.26 As a motion on whether or not electioneering should be allowed in a building concerns the rights of tenants and occupiers more than those of owners, it is advisable for owners or owners' corporations to allow occupiers who are not owners to vote on the motion and a secret ballot is always the fairest way of voting on such a controversial subject. If approval or consent has been obtained from the owners having the control of the common parts of the building or the owners' corporation, the building management organisation may conduct a questionnaire survey to collect the views of the occupiers of each flat and act according to the majority view relating to matters covered by and in accordance with this chapter.

9.27 Candidates in an election see electioneering as a form of freedom of expression whereby they express to electors their platforms and the electors have a corresponding right to receive such information. Electors can only make a proper choice when casting their votes if they know the platforms of each of the contesting candidates.

9.28 If a decision is made to allow electioneering by all candidates, the decision can also set out the hours of access and other conditions, such as not causing annoyance to occupiers, and the maximum number of persons allowed for home visits, etc for the candidates to comply [see also **Appendix I**].
[Amended in October 2007]

Decision Must Provide Fair and Equal Treatment

9.29 The EAC appeals to all management bodies of the organisations or buildings concerned to provide **equal opportunity** to all candidates or GC lists competing in the same constituency for the purposes of electioneering. However, if it is decided **not** to allow a particular candidate/GC list to conduct electioneering activities at the premises of the organisation or in the common parts of the building, no other candidate/GC list in the same constituency should be allowed to do so, for **it is important to provide fair and equal treatment for all candidates/GC lists** so as to ensure that the election is conducted fairly. Discriminatory treatment of candidates may also lead to unequal treatment of tenants, and have the undesirable effect of giving rise to dissatisfaction and discord amongst neighbours in the same building.

9.30 Whatever organisation it is in such a building, be it an owners' corporation, owners' committee, mutual aid committee, tenants' association, residents' association, management company or managers of the building, the decision that it makes relating to electioneering activities of candidates in the common parts of the building, including the office premises of the organisation and all private streets, etc, **must comply with the fair and equal treatment principle**.

9.31 The organisation concerned should make a decision that applies equally and fairly to all candidates/GC lists of each constituency instead of dealing with each application from them separately. This will avoid having to

convene a meeting to deal with each application upon its receipt, sometimes incurring delay in dealing with some applications. The EAC may treat such delay as a device to avoid compliance with the fair and equal treatment principle and may issue a reprimand or censure.

9.32 Even though such an organisation or any member of it may have reasons to exclude a particular candidate from the building, it should still adhere to the principle of fair and equal treatment for all candidates/GC lists competing in the same constituency without any discrimination.

Notification of Decision

9.33 The management bodies of organisations and buildings are urged to notify the relevant RO in writing as soon as possible of their decision on electioneering by candidates, so as to equip the RO with the correct information to be provided to the candidates who may make inquiries with him. A **form** of notification to the RO can be obtained from the REO. **Where no notification is received by the RO after the expiration of the nomination period, he may assume that there is no objection from the organisation regarding electioneering by candidates in the building.** Enquiries may be made with the District Office or sub-offices of the District in which the building is located. Nevertheless, candidates are advised to note that some buildings may not be able to make a decision on electioneering by candidates before the close of nominations and therefore have not given the notification to the RO as required. When candidates come across these buildings, they should respect the interim decision of these buildings not to allow electioneering.

Display of Election Advertisements

9.34 The management bodies of the organisations or buildings concerned should avoid handling applications by candidates/GC lists for

display of EA on a first-come-first-served basis as this may create unfairness. For example, if one candidate/GC list knows the decision and applies to put up posters and banners on all available spots in the common parts of the building, no space will be left for other candidates/GC lists who apply after him. To ensure fairness, management bodies are advised to:

- (a) ascertain all the available spots at the premises for candidates/GC lists to display posters and banners;
- (b) decide on the maximum size of posters and banners to be allowed;
[Added in October 2007]
- (c) after the close of nominations of candidature, find out from the RO how many candidates/GC lists are contesting in the constituency/constituencies concerned;
- (d) divide all the available spaces according to quality and quantity to ensure equality as far as possible into portions equivalent to the number of candidates/GC lists in the constituency/constituencies concerned; and
- (e) when one of the candidates/GC lists of the constituency concerned applies for display, allow him to draw lots to obtain a portion of the spots still available at the time of his application.

9.35 If a building has any spaces in the common area to **let** to candidates for them to display EAs or conduct other electioneering activity, the building shall ensure that such spaces are equally available to let to all the candidates contesting the same constituency, and give reasonable notice to all such candidates accordingly. Letting a space to only one of the candidates but not the others will be considered to be offering an unfair advantage to the

candidate concerned and operating unfairly towards the other candidates. Candidates should not take any such unfair advantage.

9.36 Where a decision has been made, notice of its contents together with the conditions should be posted up at the entrance so that candidates or their agents will be able to know. This openness will help prevent misunderstanding and complaint.

9.37 Whenever a decision has been taken by a building, insofar as the decision does not offend against the fair and equal treatment principle regarding electioneering activities of all candidates/GC lists of the same constituency, and such decision is not carried out unfairly towards any of the candidates/GC lists, the EAC will not intervene.

9.38 An owners' corporation or other organisation or person should be very careful not to incur any election expenses for promoting a candidate/GC list, such as putting up a banner to show support for a candidate/GC list, because it is an illegal conduct at an election for a person, other than a candidate or a candidate's election expense agent, to incur election expenses at or in connection with the election [s 23 of the ECICO].

9.39 All persons who put up any publicity materials, including those which do not look election-related, in the nomination period on private premises should declare to the management body concerned in writing whether they are candidates or intend to stand as candidates in the election. This is to prevent prospective candidates to make use of such device to promote themselves. The management body is also advised to exercise its own judgement whether the publicity materials are serving electioneering purposes and then make a decision with due regard to the fair and equal treatment principle.

PART V: CONDUCT OF ELECTIONEERING ACTIVITIES IN PREMISES UNDER THE MANAGEMENT OF HOUSING DEPARTMENT AND HONG KONG HOUSING SOCIETY

9.40 The specific guidelines to be observed by candidates and their agents in the conduct of electioneering activities in premises under the management of the Housing Department and Hong Kong Housing Society are set out in **Appendix G**. *[Amended in October 2007]*

PART VI: SANCTION

9.41 If the EAC receives a complaint of unfair or unequal treatment of candidates by any organisation or building or a person acting or purporting to act on behalf of such organisation or building, and is satisfied that the complaint is justified, it may make a **reprimand** or **censure** in a public statement which will include the names of the candidates/GC lists favourably and unfavourably treated. Candidates should therefore advise the organisation management or building owners whom they approach of these guidelines. On the other hand, however, if it is proved that a person has made a false, unfounded or unreasonable allegation of unfair treatment by an organisation or a building, the EAC may issue a reprimand or censure in a public statement against that person. *[Amended in July 2008]*

9.42 Candidates should also refrain from accepting any unfair advantage over other candidates in the same constituency even though such may be ready on offer by an organisation or a building. The EAC may publish a public **reprimand** or **censure** against the candidate who contravenes the guidelines in this chapter or whose act or behaviour results in any unfair or unequal treatment by organisation or buildings towards any other candidate.