

立法會
Legislative Council

LC Paper No. CB(2)1511/11-12

(These minutes have been seen
by the Administration)

Ref : CB2/PL/FE

Panel on Food Safety and Environmental Hygiene

Minutes of meeting
held on Tuesday, 14 February 2012, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon Tommy CHEUNG Yu-yan, SBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP (Deputy Chairman)
Hon Fred LI Wah-ming, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon KAM Nai-wai, MH
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man

Member attending : Hon LEE Cheuk-yan

Member absent : Dr Hon LEUNG Ka-lau

Public Officers attending : Item IV

Dr York CHOW Yat-ngok, GBS, JP
Secretary for Food and Health

Mrs Marion LAI CHAN Chi-kuen, JP
Permanent Secretary for Food and Health (Food)

Mr Clement LEUNG Cheuk-man, JP
Director of Food and Environmental Hygiene

Mr AU Choi-kai, JP
Director of Buildings

Mr LAI Man-hin, FSDSM
Deputy Director of Fire Services

Item V

Ms Kitty CHOI Kit-yu, JP
Deputy Secretary for Food and Health (Food) 1

Dr Thomas SIT
Assistant Director (Inspection and Quarantine)
Agriculture, Fisheries and Conservation Department

Dr Michelle YEUNG Lee
Senior Veterinary Officer (Technical Services)
Agriculture, Fisheries and Conservation Department

Dr Christopher John BRACKMAN
Veterinary Officer (Technical Services)
Agriculture, Fisheries and Conservation Department

Clerk in attendance : Mrs Sharon TONG
Principal Council Secretary (2)

Staff in attendance : Mr Jove CHAN
Senior Council Secretary (2) 8

Ms Mina CHAN
Council Secretary (2) 7

Ms Michelle LEE
Legislative Assistant (2) 7

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I. Confirmation of minutes
(LC Paper No. CB(2)970/11-12)

The minutes of the meeting held on 13 December 2011 were confirmed.

II. Information paper(s) issued since the last meeting

2. Members noted that no information paper had been issued since the last meeting.

III. Items for discussion at the next meeting

(LC Paper Nos. CB(2)993/11-12(01) and (02))

3. Members agreed to discuss the following items at the next meeting to be held on 13 March 2012 -

- (a) Review of ex-gratia allowance mechanism for fishermen affected by marine works;
- (b) Review of ex-gratia allowance mechanism for mariculturists affected by marine works; and
- (c) Food surveillance results 2011.

(Post-meeting note: As proposed by Mr Vincent FANG and with the concurrence of the Chairman, an item "Rental adjustments of the Western and Cheung Sha Wan wholesale food markets" was added to the agenda and replaced item (c) "Food surveillance results 2011" above. The revised agenda and the letter of Mr Vincent FANG dated 24 February 2012 were issued to members vide LC Paper No. CB(2)1229/11-12 on 29 February 2012.)

IV. Hawker (fixed pitch) management

(LC Paper Nos. CB(2)993/11-12(03) and (04), CB(2)880/11-12(01) and CB(2)937/11-12(01))

4. Secretary for Food and Health ("SFH") briefed members on the public consultation document on the management of fixed pitch hawker areas released by the Administration on 8 February 2012 as detailed in the Administration's paper.

5. Mr WONG Kwok-hing relayed the views of the Federation of Hong Kong Kowloon New Territories Hawker Associations ("the Federation") on the management of fixed pitch hawkers as detailed in its letter addressed to SFH on 2 February 2012, which was tabled at the meeting.

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6. Mr WONG Kwok-hing pointed out the Federation's objection to the proposed mechanism for cancellation of hawker licence ("proposed mechanism") and urged the Administration to withdraw its proposal.

7. SFH advised members that the consultation period had been extended to the end of March 2012 to allow more opportunities for relevant stakeholders, including District Councils ("DC") and hawker representatives, to discuss and express their view on the proposed mechanism. He said that the proposed mechanism aimed to combat the blatant violations of regulations by some fixed pitch hawkers despite repeated prosecutions. The Administration would further discuss with the trade representatives the detailed conditions for cancellation of hawker licence and the feasibility of issuing warning prior to cancellation of licence. SFH added that it was necessary to deter repeated offenders.

8. Mr WONG Kwok-hing said that the Federation hoped to be able to make oral representation to the Panel. He suggested holding a meeting to receive views. The Chairman said that Mr Alan LEONG had also suggested holding a special meeting for receiving deputations' views on the management of fixed pitched hawker areas in his letter dated 13 February 2012, which was tabled at the meeting. The Chairman suggested and members agreed that a three-hour special meeting would be held in April 2012 to receive views from deputations. He asked the Clerk to schedule the meeting in consultation with him.

(Post-meeting note: The letters of Mr Alan LEONG and the Federation were issued to members vide LC Paper No. CB(2)1078/11-12(01) and (02) respectively on 15 February 2012.)

9. The Deputy Chairman welcomed the extension of consultation period to allow more time for the public to express their views. He hoped that the Administration would consider the Federation's view as a cancellation of hawker licence was permanent and this would affect the hawkers' means of living.

10. The Deputy Chairman said that different fixed pitch hawker areas had their own uniqueness. The measure of "dismantling of stalls and removal of all commodities after close of business" might be inapplicable to certain hawker areas. Manpower cost would be incurred by hawkers for setting up the stalls daily, and nuisances would be caused to the neighbouring residents when workers dismantled the stalls and removed the commodities. He urged the Administration to further enhance the communication with the hawking trade and consider site-specific measures for different fixed pitch hawker areas.

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11. SFH responded that the Administration would listen to public opinions and would consider ways to gauge the views of the hawking trade as well as the residents. He stressed that there would not be a one-size-fits-all package of measures which could be implemented across the board in all hawker areas. While some hawker areas had adopted the measure of "dismantling of stalls and removal of all commodities after close of business", the fire risk at Fa Yuen Street area would be reduced if the hawker stall operators followed the arrangement of "overnight storage of commodities only inside enclosed metal stall structures". SFH added that, in the long run, the Administration would take into account the different situations of fixed pitch hawker areas in the 18 districts and listen to the views of stakeholders in considering ways to reinforce the local characteristics and facilitate the business of the hawker areas. He believed that it might not be practicable to impose a standardized design for all hawker stalls or to re-site all hawker stalls within a 6 metre radius in front of staircase discharge points of buildings.

12. SFH further said that, at a recent meeting with the Federation, he had expressed the view that hawker stall operators should better exercise their self-discipline. It was not desirable to completely rely on enforcement actions by the Food and Environmental Hygiene Department ("FEHD") to keep the hawker areas in order, as confrontation between hawkers and FEHD's officers might arise. SFH stressed that the Administration was willing to develop the hawking trade in different districts and hoped that the trade associations could also play a part in assisting the operators to enhance self-monitoring and self-management.

13. Mr KAM Nai-wai said that the public was fond of shopping at hawker areas because of their special characteristics and quality goods at low prices and convenient locations. The fixed pitches had become the icon of tourist spot and it was important to preserve their unique characteristics. He commented that the lax enforcement actions taken by FEHD gave a false impression to the public that the hawking trade was unregulated. The public had criticized that the fixed pitch hawkers were lacking self-discipline and self-management for their nuisances of environmental hygiene and the problem of unauthorized extension of business area that affected the neighbouring residents.

14. Mr KAM Nai-wai expressed disappointment that the public consultation document did not include a proposal to facilitate the development of hawking trade. Fixed pitch hawkers worked very hard to withstand the monopolization by supermarkets. He suggested that the Administration should build standardized pitches with fire resisting materials at a larger size for the fixed pitch hawkers, instead of installing sprinkler

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system as proposed in the public consultation document. Mr KAM supported the proposed mechanism, particularly for cases of subletting the fixed pitches.

15. SFH responded that the low hawker licence fee was already an aid to the development of hawking trade. He said that the expansion of pitch size depended on the availability of space. The Administration would enhance its communication with the community and further consult DCs on the management of fixed pitch hawker stalls. He did not preclude the possibility of expanding the stall size if viable, however, the number of hawkers might be reduced to allow more space for other hawkers. Another option was to develop new hawker areas to accommodate the existing hawkers in order to create room for bigger stalls at their original hawker areas for other hawkers. SFH further said that the Administration would consider building standardized stalls and requesting hawkers to pay the building cost by installments. He added that flexibility should be given to hawkers of different merchandises who might need different stall designs.

16. Mr LEE Cheuk-yan said that the Labour Party supported a hawker policy which provided rooms for the survival and development of the hawking trade. Hawking represented a culture of the society and it also created job opportunities. He expressed worries that the Administration did not genuinely support hawking trade but to proscribe hawking. This would result in the wiping out of the special characteristics and culture of the streets. Mr LEE further said that the proposed voluntary licence surrender scheme for fixed pitch hawkers was also throttling hawking trade. As new hawker licences could not be transferred or succeeded, the number of hawkers would be reduced in the long run.

17. SFH stressed that the Administration had no intention to wipe out fixed pitch hawkers. On the contrary, the Administration had been encouraging hawking trade by re-issuing Itinerant (Frozen Confectionary) Hawker Licences and new bootblack hawker licences in recent years to retain hawking with special and traditional characteristics. DC and residents of each district could decide the location of fixed pitch stalls and the Administration would work out the number of stalls to be allowed. SFH added that the Administration would examine the appropriate number of stalls, subject to the space available, residents' support and public safety.

18. Mr LEE Cheuk-yan said that Labour Party supported the view that most hawkers were willing to comply with the regulatory measures to balance the fire safety and their business. However, they opposed the indeterminate criteria for law enforcement action by FEHD. Mr Alan LEONG echoed Mr LEE Cheuk-yan's view. Mr LEONG relayed the complaints of hawkers at Fa Yuen Street that the criteria for enforcement

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varied among different FEHD's officers and sometimes it varied at different time of the same day. They also complained about the Administration's stringent enforcement that they were prosecuted for placing a trolley by the cabinets at night time while illegal parking of vehicles at Fa Yuen Street was not charged. Mr LEONG was concerned that more serious problems would be created if the proposed mechanism was implemented. He asked whether the Administration was aware of and would handle the situation.

19. The Director of Food and Environmental Hygiene ("DFEH") responded that subsequent to the Fa Yuen Street fire incidents, the criteria for law enforcement had been made known to the fixed pitch hawkers through various channels, e.g. the conditions were clearly set out in licence documents and in the law and press releases were issued by FEHD specifying the irregularities that would be targeted. FEHD also regularly communicated with hawking trade associations and advised the hawkers in its daily inspections of its criteria for law enforcement. Despite the above effort, if hawkers still claimed that the criteria was unclear, FEHD would consider issuing a letter to each licensed hawker providing details on the requirements in writing. DFEH said that most fixed pitch hawkers were cooperative. However, some hawkers lacked self-discipline and when prosecuted, they always accused the Administration of inconsistency in law enforcement. He stressed that the Administration would also review the operation of frontline FEHD's officers, particularly their attitude and criteria for law enforcement.

20. DFEH pointed out that a hawker licence would be cancelled under the proposed mechanism only when the hawker was convicted by court. He said that certain fixed pitch hawkers at Fa Yuen Street persisted in blatantly violating the law despite being prosecuted for over 30 times in a year. DFEH further said that to reduce fire risk at Fa Yuen Street, hawkers were not allowed to place trolleys or to store commodities outside the fixed pitches overnight.

21. Mr LEE Cheuk-yan noted that FEHD had recently issued guidelines that the assistant should not run the business when a fixed pitch hawker was not personally present at the stall. He pointed out that some elderly fixed pitch hawkers were not fully competent to operate their business, thus they need to employ assistants to run the business on their behalf.

22. DEFH responded that fixed pitch hawkers could employ assistants to help them operate the business. Registered assistants were allowed to operate the stall if the licensee was absent for reasonable cause e.g. during meal breaks or buying merchandise, etc. If the licensee was frequently absent or away for a prolonged period, or the assistants were frequently changed, subletting of stall might be suspected. SFH added that subletting fixed

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pitches was a serious offence and was definitely not allowed.

23. Mr Alan LEONG said that the Civic Party welcomed the extension of the period for consultation on the proposed mechanism. The Civic Party considered that the Administration should review its hawker policy, including studying the development of new hawker areas during urban planning, and issue of new hawker licences for the new hawker areas. Mr LEONG said that the Administration should take care of the anxiety of residents at Fa Yuen Street subsequent to the two fire incidents. It was inappropriate for the fixed pitch hawkers to bear all the responsibilities. Both the residents and hawkers were the victims of the Administration's faulty urban planning and outdated hawker policy. He hoped that the Administration could humbly receive the public views during the public consultation and the meeting with deputations, and devise the hawker policy that suited Hong Kong.

24. Mr Alan LEONG further said that the Urban Renewal Authority ("URA") had provided stalls for fixed pitch hawkers at Graham Street and Peel Street in Central. He asked whether it would also be applicable to Fa Yuen Street. DFEH responded that the pitches at Graham Street and Peel Street were designed before the Fa Yuen Street fire incidents. The Administration would discuss with the URA and the fixed pitch hawkers whether the stalls were effective to address potential fire risk. He added that as the geographical factors and commodities sold at Graham Street and Fa Yuen Street were different, the same stall design might not be workable in different hawker areas. The Administration would consult the District Council, hawking trade associations and fixed pitch hawkers of the concerned districts to study and develop appropriate plans for different hawker areas.

25. Mr Vincent FANG expressed gratitude to the Administration for its improved communication with hawking trade after the fire incidents and the extension of consultation period. He said that hawkers were at ease as SFH had expressed the view that the Government was not going to ban hawking trade. Mr FANG recalled that when he moved a motion at the meeting of the Legislative Council ("LegCo") to preserve and beautify the open-air bazaars with special characteristics years ago, SFH had agreed to do so and his act had encouraged the hawking trade.

26. Mr Vincent FANG and the Chairman raised the following views and queries on the measures proposed by the Administration -

- (a) fixed pitch hawkers at Fa Yuen Street had already followed the request for "overnight storage of commodities only inside enclosed metal stall structures";

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- (b) the options of "dismantling of stalls and removal of all commodities after close of business at night" and "resiting of hawker areas" were unlikely viable;
- (c) whether the Administration would allow hawkers to place a trolley in front of the cabinets if the trolley did not obstruct the carriageway;
- (d) whether the Administration would provide hawkers with standardized cabinets of three feet times four feet at subsidized cost in order to beautify the bazaar as well as to reduce fire risk of the stalls;
- (e) the option of "voluntary licence surrender scheme for fixed pitch hawkers" was supported as it allowed elderly fixed pitch hawkers to surrender their licences and reduced the number of hawker licences;
- (f) whether the Police would enhance its law enforcement actions at the hawker areas as the source of fire in the last fire incident had not been identified;
- (g) whether the hawker licence fee could be exempted in the coming financial year similar to the exemption of business registration fee as stated in the Government's budget for 2012-2013;
- (h) whether the proposed mechanism would be replaced by a demerit point system; and
- (i) whether the Administration would provide information on the economic impact of the proposed measures.

27. SFH responded as follows -

- (a) the Administration was not going to ban hawking. The Administration would work on enhancing the environment and safety, and soliciting neighbouring residents' support in order to promote the business of fixed pitch hawkers;
- (b) the Administration would implement specific measures for different hawker areas in the light of the characteristics and condition of the specific districts. The Administration would review the environment of hawker areas in the 43 streets and devise development plans for them;

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- (c) it was not the Food and Health Bureau's mandate to determine the exemption of hawker licence fee. Indeed, the licence fee was at a very low level that it could not even recover the relevant cost. Nevertheless, it was unlikely that the fee would be increased in the near future;
- (d) the Administration would consider the impact of fixed pitch hawking to Hong Kong's economic development after reviewing all hawker areas in the 43 streets in Hong Kong; and
- (e) the proposed mechanism was targeted at those fixed pitch hawkers who persisted in blatantly violating the law despite repeated prosecutions. Fixed pitch hawkers who complied with the law and licence conditions would not face any risk of cancellation of their licence.

(As the Chairman had another important commitment, the Deputy Chairman took the chair)

28. Mr WONG Yuk-man said that he had recently discussed with DFEH the management of different hawker areas including the Fa Yuen Street. He had an impression that the Administration's stance was firm. Noting from fixed pitch hawkers the unclear criteria for FEHD's law enforcement actions, Mr WONG criticized the Administration for labelling the fixed pitch hawkers who repeatedly violated the regulations as black sheep and use them as an excuse for the introduction of the proposed mechanism. He opined that if the proposed mechanism targeted at the repeated offenders, the ground for FEHD's prosecutions would be important and the threshold of prosecution should not be abused. He also commented that certain offences imposed on the licensees, such as employing an assistant without registration, or not personally present at the pitch when business was being carried on, were too stringent.

29. SFH reiterated that there was firm basis when law enforcement actions were taken. FEHD's officers clearly explained the details of offences the fixed pitch hawkers had committed and the prosecution should be substantiated by evidence. SFH hoped that zero prosecution could be achieved if hawkers were orderly running their business. FEHD had repeatedly communicated with trade associations and fixed pitch hawkers that self-discipline was the most important issue. People should not deliberately put the Government and the fixed pitch hawkers at the opposite positions.

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30. Mr Fred LI said that the Public Health and Municipal Services Ordinance (Cap. 132) empowered a magistrate to cancel a hawker licence while DEFH was also empowered to cancel a hawker licence. He sought clarification on the difference between both powers. Mr LI also enquired the current situation of subletting of fixed pitches that made known to the Administration.

31. DFEH responded that Cap. 132 provided that the magistrate might recommend DFEH to cancel a licence but the court was usually quite lenient towards hawking offences and was unlikely to exercise the power, whereas DFEH as the licensing authority has the discretion to cancel or suspend licences. DFEH said that the Administration had tried to gather evidence of subletting through undercover operations but prosecution was difficult. Stalls selling commodities not specified in the licence were indirect evidence of subletting and about 200 cases of such offence were investigated a year.

32. Mr Fred LI commented the three feet times four feet stall was too small for the diversified commodities trading nowadays. He asked whether the stall size could be expanded to improve hawkers' business environment. SFH responded that the specification of three feet times four feet was set to accommodate itinerant hawkers who usually sold unique commodities in those days. The stall could be expanded only if space was available by expanding the hawker areas or reducing the number of stalls. The Administration would need to discuss the details with DCs and stakeholders in the districts.

33. Pointing out the hawking trade's concern about implementing the cancellation of licence, the Deputy Chairman urged the Administration to consider extending the period of the consultation with stakeholders on the proposed mechanism from end of March 2012 to 7 May 2012 in alignment with the public consultation of management of fixed pitch hawker areas. Mr Vincent FANG echoed the Deputy Chairman's view. Mr FANG said that the fixed pitch hawkers had been operating in compliance with the regulations after the fire incidents. There was no urgent need for implementing the proposed mechanism.

34. SFH responded the foci of the two consultations were different. The consultation on the proposed mechanism aimed to collect views of relevant stakeholders on the specific measure to be implemented in short-run, while the public consultation of management of fixed pitch hawker areas aimed to collect public views on the medium to long-run strategy for hawker management. He said that subsequent to the Fa Yuen Street fire incidents, a LegCo Member had requested the Administration to enhance the law enforcement actions as soon as possible. Nevertheless, SFH agreed to

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consider the suggestion of extending the consultation period to 7 May 2012.

V. Proposals to amend Schedule 2 to the Veterinary Surgeons Registration Ordinance (Cap. 529)

(LC Paper Nos. CB(2)993/11-12(05) and (06))

35. Deputy Secretary for Food and Health (Food)¹ briefed members on the proposed Veterinary Surgeons Registration Ordinance (Amendment of Schedule 2) Order 2012 as detailed in the Administration's paper.

36. The Deputy Chairman noted that the Administration had included in its proposal an additional exemption to allow fish owners to conduct certain husbandry procedures while raising their fish. He asked about the assistance that the Administration would provide to the local fish farmers. He also asked whether chicken farmer could legally administer vaccine for the chicken.

37. Assistant Director (Inspection and Quarantine) ("AD(IQ)") responded that currently fish farmers or their employees might take samples from the fish gills for diagnosing parasitic infection. The proposed amendments to Schedule 2 allowed fish owners including fish farmers to carry out necessary husbandry procedures in that capacity for the prevention of diseases and better management and care of their fish. The Agriculture, Fisheries and Conservation Department ("AFCD") also provided veterinary support to local fish farmers for diagnosis and treatment of infectious diseases. Samples from the infected fish would be collected and sent to AFCD's veterinary laboratory for diagnosis and follow-up advice.

38. AD(IQ) further said that administering vaccine was regarded as husbandry procedure which was proposed to be included as one of the exempted veterinary acts to be performed by licensed livestock farmers. Usually more than 100 000 chickens were being raised at a local chicken farm and chickens were required to be vaccinated with a variety of vaccines. It would be very costly if the vaccination had to be carried out by veterinary surgeons.

39. The Deputy Chairman concluded that the Panel supported the Administration's proposals.

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VI. Any other business

40. There being no other business, the meeting ended at 4:04 pm.

Council Business Division 2
Legislative Council Secretariat
26 March 2012