

For Discussion  
on 13 December 2011

**LegCo Panel on Food Safety and Environmental Hygiene  
Management of Fixed Hawker Pitches at Fa Yuen Street**

**Purpose**

This paper briefs Members on a package of measures and suggestions aimed at reducing the fire risks posed by fixed hawker pitches at Fa Yuen Street.

**Background**

2. Street hawking has a long history in Hong Kong. It provides job opportunities, and the public may find a cheaper source of goods. However, hawking activities may give rise to environmental hygiene and noise problems as well as obstruction to public passageways, causing nuisance to nearby residents and pedestrians. For many years, the Administration has been committed to properly regulating hawking activities. Since the early 1970s, the former Urban Council had stopped issuing new hawker licences under normal circumstances, with a view to gradually reducing the number of hawkers by natural attrition. The Administration also resited hawkers into public markets in order to further reduce the number of hawkers and improve environmental hygiene. The number of licensed hawkers (including various kinds of fixed pitch hawkers and itinerant hawkers) has dropped from 20 000 in the late 1980s to some 7 000 at present.

3. There have been views in recent years that the hawking trade should be retained and revitalised in view of its traditional characteristics. In response, the Food and Health Bureau and the Food and Environmental Hygiene Department (FEHD) had reviewed the hawker licensing policy from 2008 to 2009. After consultation with this Panel, District Councils, hawker associations and relevant stakeholders, we decided to re-issue a limited number of hawker licences.

4. FEHD is responsible for regulating hawking activities, including taking enforcement action against irregularities. Since the Number 3 alarm fire at the hawker stalls at Fa Yuen Street in December last year, FEHD, after consulting the Fire Services Department, has implemented a series of fire safety improvement measures, which include ensuring sufficient space in the carriageway for fire appliances and firemen; allowing sufficient space between hawker stalls to facilitate evacuation of residents of buildings in the

vicinity; providing proper separation space between groups of hawker stalls; erecting stalls with fire-resisting materials; and requiring hawker stalls to obtain independent electricity supply from a legal source, etc. Over the past year, FEHD has instituted more than 660 prosecutions against non-compliances and obstruction at Fa Yuen Street. As regards storage of commodities outside their stalls, FEHD issued in early November this year more than 200 warning letters to stall hawkers requiring them to remove goods from the streets. Unfortunately, despite all these efforts, the fire tragedy still happened.

5. In the wake of the fire at Fa Yuen Street on 30 November this year, FEHD has immediately strengthened enforcement regarding non-compliances in the hawker area at Fa Yuen Street and all hawker areas in Hong Kong. If the area used or the size of canopy is found to have exceeded that permitted, or if street obstruction by commodities or overnight storage of commodities beyond the stall area is detected, FEHD will take enforcement actions.

6. Although the cause of the fire is still under investigation, the Administration considers it necessary to draw on the experience of the fire and introduce new measures to improve the management of hawker areas, so as to further reduce the fire risks. In this connection, the inter-departmental working group chaired by the Chief Secretary for Administration is actively considering different options. Public safety, particularly the safety of life and properties of people who live in the vicinity of hawker areas, is our paramount consideration when examining these options. Naturally, the long-term operating environment of stall hawkers should also be taken into account. We consider that it is the duty of stall hawkers to abide by the licensing conditions. FEHD has immediately tightened up enforcement after the fire, and the irregularities found in the hawker area at Fa Yuen Street have been considerably reduced. That notwithstanding, according to past experience in stall management, reliance on the self-discipline of traders alone and strengthened law enforcement are not sufficient.

7. To enhance public safety, the Government is actively considering a package of measures and suggestions aimed at improving the management of the hawker stalls. The two fires at Fa Yuen Street show that irregularities including oversized stall canopies, street obstruction by commodities and overnight storage of commodities beyond the stall area may aggravate any fire which breaks out in the area. Therefore, the Administration considers that, as the first step in the fire prevention of hawker stalls, the strict enforcement of the licensing conditions should persist. Moreover, we also suggest introducing a mechanism for cancellation of hawker licences, studying the arrangement of “setting up stalls only during trading hours” and other modes of operation as well as examining the feasibility of relocating the stalls in the hawker areas, etc. In the formulation and implementation of short, medium and long-term measures, we will take forward the relevant measures in stages starting with those which are easier to implement.

## **Proposal on the Mechanism for Cancellation of Hawker Licences**

8. All hawkers are subject to regulation under the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislation, the Hawker Regulation (Cap. 132AI). They provide for the issue, renewal and cancellation of licences; the sale of specified commodities; application for permission to appoint assistants and deputies; the delineation, control and use of fixed pitches; and no obstruction caused by licensees, etc.

9. Stall hawkers are duty-bound to abide by the licensing conditions. However, according to past experience in stall management, reliance on the self-discipline of traders alone is not sufficient. There are stall hawkers who persist in blatantly violating regulations despite repeated prosecutions. According to FEHD's records, there were about 7 000 convicted cases in 2010 involving licensed hawkers or their assistants, etc, 28% of whom were prosecuted four times or more. The Hawker Regulation has prescribed penalties for various offences, and FEHD has taken vigorous law enforcement actions and stepped up enforcement efforts as the circumstances may require. Despite all these, it is obvious that prosecution against individual non-compliance cases on its own cannot effectively deter repeated offences committed by licensed hawkers. In view of some hawkers' disregard for the existing penalties and to enhance the effectiveness of law enforcement, we propose introducing a mechanism for the cancellation of hawker licences with a view to achieving a greater deterrent effect.

10. Under Section 125(1)(b) of the Public Health and Municipal Services Ordinance (Cap. 132), the Director of Food and Environmental Hygiene (DFEH) may exercise discretion to cancel any licence. Currently, FEHD has already put in place policies to suspend or cancel the licence / permit of a licensed food premises and to terminate the tenancy of a public market stall found to have breached the relevant regulations and tenancy regulations. Taking into account that the business nature of hawkers is similar to that of market stalls, we propose to formulate a mechanism for cancellation of hawker licences with reference to the existing arrangements for the termination of tenancy for market stall tenants who have breached the Public Health and Municipal Services Ordinance (Cap. 132) or its subsidiary legislation (**Annex I**).

### *Offences Under the Mechanism for Cancellation of Hawker Licences*

11. Some irregularities relating to licensed hawkers, such as trading outside the permitted area, storage of goods outside the approved area after business hours, stall size exceeding the specified dimensions, stall subletting or illegal connection of electricity, etc, pose a much higher fire risk than others. We therefore propose that the conviction of offences relating to these irregularities should be included in the mechanism for cancellation of hawker licences. These irregularities are set out in **Annex 2**.

### *Proposed Mechanism for Cancellation of Licences*

12. The mechanism for cancellation of licences should be applied based on the number of prosecutions and convictions within a period of time. It is proposed that if a licensed hawker is convicted for six times within three months for breaching any hawker-related provisions under the Public Health and Municipal Services Ordinance (Cap. 132) or its subsidiary legislation, the Hawker Regulation (Cap. 132AI), DFEH may consider cancelling his/her hawker licence in accordance with the mechanism.

13. Serious offences, including stall subletting, illegal connection of electricity and providing false information to obtain a hawker licence, should be given harsher penalties. Stall subletting considerably increases the fire risks by aggravating the problem of unauthorised trading outside the approved area, and illegal connection of electricity can even cause fire. Providing false information in order to acquire a hawker licence is also a serious offence. Therefore, we suggest that if a licensee has committed any one of these three offences, DFEH may consider immediate cancellation of his/her hawker licence.

14. The Administration also suggests that if the licensee is dissatisfied with the decision of DFEH, he/she may make representations in response to the decision within seven days. This will give the licensee an opportunity to express or submit his/her views or disagreement to the material facts of the case. DFEH will consider the representations and decide whether to affirm or to vary his original decision.

### *Appeals Mechanism*

15. If DFEH affirms his decision to cancel the hawker licence and the licensee is dissatisfied with the decision, he/she may appeal to the Licensing Appeals Board (LIAB) within 14 days under Section 125(9) of the Public Health and Municipal Services Ordinance (Cap. 132). After hearing, the LIAB may affirm, vary or set aside the decision of DFEH. Under Section 125B(4), if the licensee is dissatisfied with the decision of the LIAB, he/she may appeal to the Municipal Services Appeals Board (MSAB) within 14 days after receiving the decision of the LIAB.

### **Other Options to Address the Fire Risks Posed by Hawker Stalls**

16. Apart from introducing a mechanism for cancellation of hawker licences to strengthen the regulation of hawker stalls, the Administration is actively considering various other options to improve the environment of hawker areas so as to further reduce the fire risks. Our objective is to minimise the potential fire hazards posed by open-air hawker stalls to adjacent buildings. In examining these options, our major considerations include their effectiveness in enhancing the fire safety of hawker stalls, their impact on the overall environment of hawker areas and the long-term operating environment of stall hawkers. At present, the options under consideration include the arrangement of “setting up stalls only

during trading hours”, the provision of fire services installations as well as relocating the stalls in hawker areas, etc.

*Overnight storage of commodities only inside enclosed fire-resisting stall structures*

17. Streets should not be used for storage of goods. Stall hawkers’ existing practice of storing their goods outside their stalls after close of business is unacceptable. There is a pressing need to enhance fire safety of the hawker stalls. We consider that, after close of business, the stall hawkers’ goods must be stored inside FEHD-approved enclosed stall structures (including cabinets) which are built with fire-resisting materials and to the specified dimensions. No goods can be stored outside the structures. These are the most basic requirements in reducing fire risks. FEHD has already implemented stringent enforcement of such requirements at Fa Yuen Street and will extend them to other hawker areas. The relevant conditions will be set out clearly in hawker licences.

18. The piling up of stocks and miscellaneous articles at hawker stalls, including inflammable substances (such as garments made of synthetic fibres), is prone to cause fire. If a fire breaks out during closing hours at night, it may not be put out immediately. Coupled with the fact that the public are less alert to fire risks at night, fire will spread quickly. The above-mentioned requirements concerning the storage of commodities as well as the materials and dimensions of stall structures can reduce hawker stalls’ fire risks during closing hours. Residents living in the vicinity of hawker stalls will thus be better protected. For the stall hawkers, they will have to identify places for overnight storage of goods and some of them may need to hire services to take care of the daily removal of goods. But as far as we know, quite a few stall hawkers are already renting nearby places for storage of goods.

19. The Administration will further explore whether commodities should be removed from the stall structures during night-time closing hours.

*“Setting up stalls only during trading hours”*

20. The arrangement of "setting up stalls only during trading hours" refers to the mode of operation under which stall hawkers should dismantle and remove metal frames and other paraphernalia during closing hours at night. Stalls are set up and goods are displayed again before trading hours during the day. When compared to the requirement of overnight storage of goods inside FEHD-approved enclosed stall structures or cabinets which are built with fire-resisting materials and to the specified dimensions, "setting up stalls only during trading hours" can more thoroughly eliminate the fire risks posed by the stalls during closing hours. If it is implemented, stall hawkers will have to find places for overnight storage of goods and may also hire services for the daily dismantling and setting up of stalls and other paraphernalia. The dismantling and setting up of metal frames will cause noise nuisance to nearby residents.

### *Additional Fire Service Installations*

21. There are views in the community that the hardware of hawker stalls should be enhanced with a view to perfecting the fire-resisting quality of the hawker stalls. One idea is whether hawker stalls should be equipped with fire service installations (e.g. sprinklers). We will also study this option. Our major considerations include the effectiveness of such installations in minimising fire risks and the technical feasibility of installation works. At the same time, the impact on the overall environment of hawker areas, the operating environment of stall hawkers and the relevant financial implications for them, as well as nearby shops will also be considered.

### *Relocation of stalls in the hawker areas*

22. To eradicate the potential fire hazards posed by open-air hawker stalls to adjacent buildings, the most fundamental solution is to relocate the hawker areas located in densely populated areas. The hawker stalls affected can be relocated to vacant stalls in public markets so that stall hawkers can continue their business there. However, this option is fraught with practical difficulties. At present, vacant stalls in public markets may not be able to accommodate all the affected stall hawkers and vacant stalls may not be suitable for use as hawker stalls. Moreover, there are many views in the community that the hawking trade should be retained and revitalised as it is rich in traditional characteristics and a part of the local culture. Relocating a whole hawker area to a public market may ruin the original character of hawker stalls.

23. The fire at Fa Yuen Street has shown that the stalls next to staircases of buildings pose fire risks to residents. Hence, to minimise the fire risks posed by stalls to the surrounding buildings, we may need to relocate some of the stalls near the entrances of buildings. Relevant measures are being studied by the Administration.

### **Implementation Timetable**

24. The Administration will consult the relevant stakeholders, including the District Councils concerned and representatives of stall hawkers, on the proposed mechanism for cancellation of hawker licences. The consultation period will run from today until 12 February 2012, with a view to putting the mechanism into effect in April 2012. As for other improvement measures, we will carefully study the pros and cons, feasibility and the fire risks involved in the various options. Subsequently, public consultations and discussions with relevant stakeholders will be conducted. We understand that the public expects an early implementation of the improvement measures. The Administration is now conducting the studies at full speed and will strive to strike a balance between reducing fire hazards and giving due regard to stall operation. In formulating and implementing the various improvement proposals, the Administration will take into account the overall situation of all the hawker areas in Hong Kong. That said, if necessary, we will suitably take forward the

relevant measures in stages starting with those which are easier to implement in accordance with the actual situation of individual hawker areas

**Advice Sought**

25. Members are invited to comment on the above proposals.

**Food and Environmental Hygiene Department  
Food and Health Bureau  
December 2011**

**Arrangements for Termination of Tenancy Agreement of Public Market Stalls  
due to Breaches of Public Health and Municipal Service Ordinance (Cap.132)  
or its Subsidiary Legislation**

- (a) If four offences resulting in conviction under the Public Health and Municipal Service Ordinance (Cap.132) or its subsidiary legislation are registered against the stall's tenant, agents or employees within a period of 12 months, the Director of Food and Environmental Hygiene (DFEH) will issue a "notice of intended termination of tenancy" (the Notice) to terminate the stall's tenancy agreement. If the offence committed is considered of a serious nature, only one conviction will warrant the issue of the Notice immediately by the Food and Environmental Hygiene Department;
- (b) If the tenant is dissatisfied with DFEH's decision, he/she may make representations in response to the intended termination decision in seven days (in case of serious offences where the Notice had been immediately issued by DFEH, representations should be made within four days). This would provide a useful opportunity for the tenant to submit his/her views or disagreement with the material facts of the case. DFEH will then consider the representation submitted and decide on whether to affirm or vary his original decision; and
- (c) If DFEH affirms the decision of terminating the tenancy, and the tenant is not satisfied with the decision, he/she may lodge an appeal with the Municipal Services Appeal Board (MSAB) within 30 days. After hearing, MSAB may affirm, vary or set aside the decision of DFEH.

**Offences Under the Mechanism for Cancellation of Hawker Licences**

<b>Offences</b>	<b>Relevant Provisions</b>	<b>Maximum Penalty</b>
Hawking unspecified commodity or service	Section 5(2) of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Employing an assistant without registration	Section 12(1A) of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
*Subletting of stall	Section 13(1) of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Failing to comply with order to vacate allocated pitch either permanently or temporarily (only applicable to circumstances under which the vacating is necessary to improve fire safety)	Sections 34(1) and 34(4) of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Not being personally present at the pitch when business is being carried on	Section 38 of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Commodities being hawked and equipment or objects used in connection with hawking are placed outside the boundaries of the pitch	Section 48 of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Causing obstruction	Section 53 of Hawker Regulation	Liable to a fine of \$5,000 and imprisonment for one month, and to a further daily fine of \$100.

<b>Offences</b>	<b>Relevant Provisions</b>	<b>Maximum Penalty</b>
*Installing or connecting electrical appliances, electrical wiring, or other electrical equipment without approval	Section 54 of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Breaching of conditions of licence related to the size, height or construction materials of stall by a licensed hawker	Section 55 of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
*Making false declaration for the purpose of obtaining a licence	Section 56(7) of Hawker Regulation	Liable to a fine of \$10,000 and to imprisonment for six months.

Note: \* Serious offence. Upon conviction of a serious offence, DFEH may consider cancellation of the licence with immediate effect.