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Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat for the special meeting on 7 June 2014

Shop Front Extensions

Purpose

This paper provides background information and summarizes major concerns of members of the Panel on Home Affairs ("the Panel") on the public consultation document on "Enhanced Measures against Shop Front Extensions ("SFEs")" issued by the Home Affairs Department ("HAD") in March 2014.

Background

2. According to the consultation document released in March 2014, SFEs broadly refer to the occupation of public places by shops, including food premises, in front of or adjacent to their premises for the purpose of conducting or facilitating business activities. Such extensions are very often at the expense of road access, safety and environmental hygiene, and affect the quality of city life. They usually cause nuisance, inconvenience and hazards to pedestrians and traffic.

3. Currently, the Government tackles the problem of SFEs through a four-pronged approach, namely -

- (a) law enforcement by individual departments, including the Food and Environmental Hygiene Department ("FEHD"), the Lands Department ("LandsD"), the Hong Kong Police Force ("HKPF") and the Buildings Department ("BD"), using powers under the relevant Ordinances;
- (b) joint operations led by District Officers for more complex cases involving several departments;

- (c) collaboration with the District Councils ("DCs"); and
- (d) public education and publicity.

4. According to the Administration, despite the efforts made, the problem of SFEs persists. Proliferation of SFEs continues to compromise the safety and access of pedestrians, drivers and other street users.

Proposed enhanced measures against SFEs

5. In order to tackle SFEs more efficiently and effectively and help address the deficiency of the existing summons system (i.e. the long lead time involved in the prosecution process and the light penalties that carry insufficient deterrence), the Government is exploring the possibility of introducing a fixed penalty system against SFEs in order to heighten the deterrent effect. To address the prevalent problem, the Government also proposes to enhance community involvement by capitalizing on DCs' knowledge of the district characteristics, and the needs and aspiration of people in their district. Public education and publicity efforts will also be stepped up.

Public consultation

6. HAD, in collaboration with FEHD, LandsD, HKPF and BD, has prepared and issued a consultation document to seek public views on how problems associated with SFEs can be tackled more effectively. The consultation period will last from 14 March until 14 July 2014. The Administration will consult all the 18 DCs and meet with interested community groups and relevant stakeholders from the business sector during the consultation period.

Members' views and concerns

7. The Panel was briefed on the consultation document at its meeting on 24 March 2014. Members' major views and concerns are summarized below.

Criteria for determining the priority of enforcement against SFEs

8. Given the complicated and controversial nature of the issue, some members were of the view that the Administration should not adopt a simple across-the-board approach to tackle the problems associated with SFEs. They considered it appropriate to give due regard to the views of DCs and to capitalize on their knowledge of the district characteristics and the needs and aspirations of people in their districts. In determining whether a tolerance level for SFEs

should be set, the Administration should take into account the need of ensuring pedestrian access and safety.

9. The Administration advised that given their local knowledge and close contacts with residents, DCs were in a good position to advise the enforcement departments on the priority of enforcement. In general, SFEs that posed imminent danger to pedestrians and traffic should be assigned a higher priority. On the other hand, SFEs which constituted a distinct characteristic and contributed to the vibrancy of the district might be assigned lower priorities or even tolerated, subject to the conditions that the SFEs concerned did not cause any imminent danger to pedestrians and traffic, and that the shop operators could exercise self-discipline by adhering to the level of extension agreed with the enforcement departments.

10. There was a view that the Administration should formulate a clear enforcement policy against SFEs to ensure consistency in enforcement with a view to providing adequate and safe pedestrian access. DCs' involvement should be limited to consideration of special cases where discretion might be granted or SFEs be tolerated, given their distinct characteristics or contributions to the vibrancy of the district. To ensure effectiveness and efficacy in abating SFEs, the Government should continue to improve the existing multi-disciplinary enforcement regime. This apart, enforcement departments should conduct joint operations against SFEs more frequently.

11. Concern was also raised on whether and how objective yardsticks could be applied in assessing whether an SFE constituted a distinct characteristic and contributed to the vibrancy of the district. The Administration stressed that in drawing up the criteria for determining the priority of enforcement against SFEs, a host of factors, including (a) road access and safety of pedestrians, vehicles and other road users, (b) extent and nature of SFEs, (c) public hygiene and amenity, (d) effectiveness of past enforcement action, (e) instances of complaints, (f) district characteristics of the concerned area and (g) community feedback and aspirations, had to be taken into account.

Enforcement difficulty in relation to SFEs

12. Noting the difficulty in law enforcement, some members considered it important for the Administration to make clear to the public which SFEs might be/had been assigned lower priorities of enforcement or even tolerated, as well as the rationale behind the Administration's decision of providing a tolerance level for some SFEs. Concern was also raised as to whether DCs' recommendations in respect of the designation of "black spots" were final.

13. According to the Administration, it had all along been tackling the problem of SFEs through a four-pronged approach. Despite efforts made, the problem persisted and proliferation of SFEs continued to compromise the safety and access of pedestrians, drivers and other street users. Against this background, the Administration was looking for an additional enforcement tool to tackle SFEs more efficiently and effectively, and was exploring the possibility of introducing a fixed penalty system against SFE offences in order to heighten the deterrent effect. The proposed fixed penalty system was intended to be an additional measure, which would help address the deficiency of the existing summons system. It, however, would not replace the other existing enforcement tools. The Administration also reiterated that as DCs had knowledge of the district characteristics and the needs and aspirations of people in the district, they were well placed to advise the Government on the priority of enforcement.

Proposed level of fixed penalty

14. Some members considered that given the deficiency of the existing summons system, the proposed fixed penalty system might be a feasible option to solve the problem. Expressing concern about the considerations to be taken into account by the Administration in proposing the level of fixed penalty under the new system, there was a view that any proposed fine must be proportionate to the nature and severity of the offence in comparison with other fixed penalties.

15. The Administration responded that at present, the penalties in most cases were insignificant when compared to the high rentals that shop operators would have to pay for use of any additional space. While public views would be sought on the level of fixed penalty in this consultation exercise, the Administration would make reference to a number of factors outlined in the consultation document (such as, amongst others, the current level of fixed penalty under the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) (i.e. at \$1,500)).

16. There was a suggestion that the Administration should consider taking more vigorous actions against repeated SFE offences. The Administration advised that if the proposed fixed penalty system was to be implemented, according to legal advice sought and obtained by the Administration, penalty notices could be issued to the same shop operator again if the problem was not rectified within a reasonable period of time. However, details of the prosecution policy including guidelines could only be worked out in consultation with enforcement departments at a later stage if the proposed fixed penalty system was supported by the community.

Street management problems

17. Pointing out that SFEs were only one of the many problems associated with street management, some members expressed concern about the problem of obstruction of public places/walkways by goods or articles left unattended (e.g. easy mount frames for displaying commercial publicity materials and illegally parked bicycles). There was a suggestion that the Administration should take the opportunity to also address the problems associated with street management in its endeavours to address SFEs.

18. The Administration responded that street management was a common problem to many districts. While it fell within the ambits of various enforcement departments, enforcement actions would be taken in accordance with the relevant Ordinances. The current proposal, however, was mainly about how the Administration could tackle SFEs more effectively.

Latest developments

19. Mr Tommy CHEUNG and Mr Vincent FANG, non-Panel members, had jointly written to the Panel Chairman on 21 March 2014, expressing concern about impacts of the proposal on the catering and retailing trades and requesting the Panel to receive public views on the consultation document. In the light of wide public concern over SFEs, members agreed to hold a special meeting on 7 June 2014 to receive views from interested parties on the subject.

Relevant papers

20. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Appendix

Relevant papers on Shop Front Extensions

Committee	Date of meeting	Paper
Council meeting	28.11.2012	Written question raised by Hon CHAN Han-pan on "Control of unauthorized extension of business area by food premises and shops"
Council meeting	5.6.2013	Written question raised by Hon Michael TIEN Pul-sun on "Law enforcement against illegal extension of business area"
Council meeting	27.11.2013	Written question raised by Dr Hon Helena WONG Pik-wan on "Problems caused by unlicensed restaurants"
Panel on Home Affairs	24.3.2014 (Item V)	Agenda Minutes

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