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Panel on Home Affairs

Background brief prepared by the Legislative Council Secretariat for the meeting on 9 January 2015

Enhanced Measures against 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. HAD has, in collaboration with the Food and Environmental Hygiene Department ("FEHD"), the Lands Department ("LandsD"), the Hong Kong Police Force ("HKPF") and the Buildings Department ("BD"), prepared the abovementioned consultation document. HAD launched a public consultation exercise from 14 March to 14 July 2014 to seek public views on how problems associated with SFEs could be tackled more effectively. 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 FEHD, LandsD, HKPF and 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 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 has explored the possibility of introducing a fixed penalty system against SFEs in order to heighten the deterrent effect. To address the prevalent problem, the Government has also proposed to enhance community involvement by capitalizing on DCs' knowledge of the district characteristics as well as the needs and aspiration of people in their district. Public education and publicity efforts will also be stepped up.

Members' views and concerns on the proposed enhanced measures

6. The Panel discussed with the Administration the public consultation document on the enhanced measures against SFEs on 24 March 2014 and held a special meeting on 7 June 2014 to receive deputations' views on the subject. Members' major views and concerns are summarized below.

Criteria for determining the enforcement priority against SFEs

7. 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.

8. The Administration advised that given their local knowledge and close

contacts with residents, DCs were well placed to advise the enforcement departments on the enforcement priority. In general, SFEs that posed imminent danger to pedestrians and traffic should be assigned a higher priority. On the other hand, SFEs that 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.

9. Questioning whether shop operators would exercise self-discipline, some members considered 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.

10. 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. In some members' view, it was not easy to forge a consensus among various parties on whether discretion might be granted or SFEs be tolerated. 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.

11. There was a suggestion that the Government should consider providing a platform where DC members, residents in the districts concerned, representatives of relevant trade associations and representatives of relevant government departments could discuss whether and how to set guidelines on the circumstances in which SFEs could be tolerated. The Administration responded that after discussion with relevant parties (including DCs, the District Management Committees, local resident organizations and representatives of relevant trade associations) and with the agreement of relevant enforcement departments, there were at present eight locations in five districts where SFEs were tolerated subject to certain conditions set out by the enforcement departments concerned. These communication channels had been effective in forging consensus on the extent of tolerance for SFEs and resolving SFE cases.

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 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 would not replace the other existing enforcement tools and was not meant to be applied in a dogmatic and inflexible manner. 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.

14. At the special meeting of the Panel on 7 June 2014, some members and deputations from the catering and retail sectors expressed strong objection to the Government's proposal of introducing a fixed penalty system. In their views, the proposal would bring adverse impact on their business operating environment, affecting in particular small-sized retail stores and food premises. Expressing doubt on the effectiveness of the proposed fixed penalty system in addressing the problem of SFEs given the complicated and controversial nature of the issue, there was a view that the proposed system might cater for straight-forward and clear-cut cases of SFEs. Members hoped that the Government could strike a balance between aligning the enforcement criteria and exercising discretion, taking into account the circumstances of individual cases including whether or not the SFEs concerned were recurrent in nature and had caused obstruction that unduly inconvenienced or endangered road users.

Proposed level of penalty

15. 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.

16. 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 the 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)).

17. Expressing reservations about the proposal to apply a uniform penalty to all businesses irrespective of their size and scale, some members were of the view that the Government should consider adopting a tiered penalty system. They considered that for the sake of fairness, heavier penalties should be imposed if SFE offences were committed by large establishments and the stacks of goods were placed on fairly crowded walkway/carrageway during busy hours. Some other members, however, objected to the proposed adoption of a tiered penalty system under which the level of penalty be scaled on the basis of business size and the location of SFEs. In their views, apart from exploring the possibility of introducing a fixed penalty system against SFE offences, the Government should continue to follow up and monitor the situations and make sustained public education and publicity efforts.

18. There was a further 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. Details of the prosecution policy including guidelines would 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

19. 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.

20. 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 was mainly about how the Administration could tackle SFEs more effectively.

Latest development

21. The Administration will report to the Panel on the outcome of the public consultation at the meeting on 9 January 2015.

Relevant papers

22. 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 on "Law enforcement against illegal extension of business area"
Council meeting	27.11.2013	Written question raised by Dr Hon Helena WONG on "Problems caused by unlicensed restaurants"
Panel on Home Affairs	24.3.2014 (Item V)	Agenda Minutes
Panel on Home Affairs	7.6.2014 (Item I)	Agenda Minutes