

**Comparison between Proposed Hawker Regulation and
Hawker (Regional Council) Bylaws**

I. Comparison between Proposed Regulation and Corresponding RC Bylaws

<u>Proposed Hawker Regulation (based on the Hawker (UC) Bylaws)</u>		<u>Corresponding Hawker (RC) Bylaws</u>		<u>Remarks</u>
<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
1	Citation	1	Citation	Repealed in accordance with the current law drafting practice.
2	Definitions	3	Definitions	Definitions of “deputy”, “hawker” and “hawker bazaar” which appear in the RC Bylaws have been incorporated upon the inclusion of relevant provisions.
3 3(c)	The Regulation does not apply to car cleaners and hawkers holding a cleaner’s permit issued under the Road Traffic (Parking) Regulations <i>The Regulation does not apply to hawkers hawking on enclosed land held on lease or permit from the Government</i>	2	The Regulation does not apply to car cleaners, hawkers holding a cleaner’s permit issued under the Road Traffic (Parking) Regulations and hawkers hawking on enclosed land held on lease or permit from the Government	Section 3(c) is based on Bylaw 2(2)(b) of the RC Bylaws. It ensures that the Regulation will not catch hawking activities on enclosed land held on lease or permit from the Government.

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
4	The Director may by notice published in the Gazette declare hawker permitted places	--	No such provision	There is no hawker permitted place in the Pro RC area and therefore the provision would not affect existing licensed hawkers in the Pro RC area.
5 5(2A)	Prohibiting a licensee to hawk any commodity or service not specified in licence and to cook or heat any food <i>A person may hawk without a licence in an area set aside by the Director</i>	4	Hawking must be licensed; a person may hawk without a licence in an area set aside by the Council; Prohibition on cooking or heating of any food	Section 5(2A) allows for hawking activities in farmer hawker sites in the ProRC area. It is a long-established traditional practice for farmers to sell their surplus farm produce in designated areas. There is no merit in licensing these part-time and casual hawkers. Eliminating such sites may arouse local discontent. At present, there are 3 farmer hawker sites in operation in the Pro RC area. No new sites will be allowed.
5A	<i>Hawking is restricted in special areas gazetted by the Director except for holders of licences with permission endorsed</i>	5	Hawking is restricted in special areas gazetted by the Council except for holders of licences with permission endorsed	Section 5A is inserted to reflect the current policy in the Pro RC area. The restriction on hawking in special areas aims at deterring hawking activities in busy streets and sensitive areas such as around ProRC markets to minimize obstruction to pedestrian movements.

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
6	No licence shall be issued to persons under 18 years of age or is already holder of a valid licence	--	No such provision	It has been a standing practice in RSD to enforce the restrictions stipulated in section 6.
7	Requirements as to application for a licence	8	Particulars to be supplied on application for a licence	There are minor differences between the two sections. The UC Bylaws allows more flexibility for the licensing authority to obtain particulars from applicants as may reasonably require.
8	Particulars to be stated on fixed-pitch hawker licences; Director may impose conditions in such licence	--	No such provision	Although not stipulated by law, the hawker licences issued by the ProRC contain similar particulars. Section 8 will not affect existing hawkers in ProRC areas.
9	Particulars to be stated on itinerant hawker licences; Director may impose conditions in such licence	--	No such provision	Although not stipulated by law, the itinerant hawker licences issued by the ProRC contain similar information. The provision will not affect existing holders of itinerant hawker licences in the ProRC area.
10	Issue of temporary licences	10	Issue of temporary licences	Similar provision

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
10A	Issue of hawker badges together with the issue or renewal of licences; requiring a licensee to wear hawker badge while hawking	10A	Issue of hawker badges together with the issue or renewal of licences; requiring a licensee to wear hawker badge while hawking	Similar provision
11	A hawker may appoint a deputy if he is to be absent from Hong Kong or is incapacitated by illness for a period of more than 8 days, subject to prior permission of the Director. The Director shall not, except in special circumstances, grant any permission for any period exceeding 6 months. A deputy is to be liable to prosecution for contravention of the Regulation	15	A hawker may appoint a deputy in his absence for a period not exceeding 6 months, subject to the ProRC's consent.	There are slight differences between the two sections concerning the period of absence for which appointment of a hawker's deputy is required. Under the RC Bylaws, the authority has discretion over the period for which a deputy may be appointed provided it does not exceed 6 months. The UC Bylaws specified the minimum period for such an appointment (8 days) and allows the authority to grant permission for a period exceeding 6 months under special circumstances.

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
12 <i>12(1A)</i>	A fixed-pitch hawker may employ assistants; an assistant is to be liable to prosecution for contravention of the Regulation <i>A hawker may employ a person whose name is endorsed on his licence to be his assistant</i>	16	A hawker may employ a person whose name is endorsed on his licence to be his assistant	The incorporation of section 12(1A) which is based on Bylaw 16 of the RC Bylaws will provide better control over the appointment of hawkers' assistants. Most hawkers in the PUC area already voluntarily have their assistants endorsed by USD. After passage of the Bill, all fixed-pitch hawkers in the PUC area will be informed of the requirement and allowed a reasonable period for seeking endorsement of their assistants.
<i>13</i>	<i>Prohibition on subletting or transferring stalls, licences and pitch cards. [Section 13 of UC Bylaws (Prohibition on transferring of licences) repealed and replaced by section 14 of RC Bylaws]</i>	14	Prohibition on subletting or transferring stalls, licences and pitch cards.	The RC provision is more comprehensive and provides better control over the transfer of licences. It is therefore adopted.

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
14	<i>Prohibition on alteration and defacement of licences, hawker badges and pitch cards. [section 14 of UC Bylaws (Prohibition on alteration of licence, and hawker badges) repealed and replaced by section 18 of RC Bylaws.]</i>	18	Prohibition on alteration and defacement of licences, hawker badges and pitch cards.	The RC provision is more comprehensive than the UC version and is therefore adopted. The provision is slightly modified for better comprehension.
15	Requiring a licensee to carry his hawker licence at all times while hawking	--	No such provision	Hawkers in the ProRC area are already required to carry their hawker licences while hawking so that they can produce the licences for inspection on demand.
16	Requiring licensees to produce licences for inspection on demand	19	Requiring licensees to produce licences for inspection on demand	Similar provision
17	Issue of duplicate licences upon loss or defacement	12	Issue of duplicate licences upon loss or defacement	Similar provision
18	Specifying the duration of licences (12 months)	7(2)	Specifying the duration of licences (not exceeding 1 year)	Similar provision

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
19 <i>19(3)</i>	Cancellation of licences by Director on request of the licensee or on death of licensee <i>The Director may in discretion refund a proportion of licence fee</i>	13	Termination of licence on death of licensee; the Council may refund licence fee on termination or cancellation of licence (other than for reason of misconduct of the hawker)	The RC provision concerning the refund of licence fee is inserted. This is already a standing administrative practice in the PUC area.
20	Requiring the holder to surrender licence and hawker badge on termination of licence	13A	Requiring the holder to surrender licence and hawker badge on termination of licence	Similar provision
21	Application for renewal of licences; licence is to remain in force (if application made before expiry date) until the licensee is notified of the renewal or refusal to renew	7	Council to grant and renew licences and to allocate pitches and wall stalls; calculation of licence fee for period less than 1 year	There is no need to set out the details of calculation of licence fee.
22	Prohibiting a licensee to hawk in hawker permitted area unless endorsed by the Director	--	No such provision	There is no hawker permitted area in the Pro RC area.
23	(Repealed L.N. 73 of 1973)	N.A.	N.A.	N.A.

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
24	Requiring applicant or licensee to notify the Director of change of particulars	8(2)	Requiring licensee or person allocated with a pitch or wall stall to notify the Council of change of particulars	Similar provision
25	Production of licence on request of Director for amendment	--	No such provision	Will not adversely affect licensed hawkers in the Pro RC area.
26	Director to keep a register of licences for public inspection; Director is to correct erroneous entries; certificate certified by Director will serve as sufficient evidence in proceedings	--	No such provision	A register is already kept by RSD.
27	Director may cause fixed pitches to be set aside	--	No such provision	Existing licensed hawkers in the ProRC area will not be adversely affected.
28	[repealed]	--	No such provision	Provision of meters for charging of fees for the use of fixed pitches has become obsolete.
29	[repealed]	--	No such provision	- Ditto -
30	[repealed]	--	No such provision	- Ditto -

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
31	Director may impose conditions as to the use of fixed pitches	--	No such provision	Existing licensed hawkers in the ProRC area will not be adversely affected.
32	Prohibition on the use of any pitch where relevant sign is erected	--	No such provision	Existing licensed hawkers in the ProRC area will not be adversely affected.
33	Director to allocate fixed pitches to holder of fixed-pitch hawker licence	--	No such provision	- Ditto -
34	Vacation of allocated pitch in the event of street cleaning, street repairs, scavenging, disturbance or emergency at request of Director	28	Removal of equipment to facilitate scavenging or street cleaning at request of authorized officers of Regional Services Department	The UC provision covers a wider scope. It will not adversely affect licensed hawkers in the Pro RC area.
35	Cancellation of fixed pitch allocation at request of licensee	--	No such provision	Existing licensed hawkers in the ProRC area will not be adversely affected.
36	Restriction on the use of fixed pitches by only holders of fixed pitch licences	8A	Restriction on the use of fixed pitches and wall stalls by only holders of fixed pitch licences	Similar provision

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
37	Prohibiting holders of fixed-pitch hawker licences to use pitches allocated to other licensees	--	No such provision	Existing licensed hawkers in the ProRC area wil not be adversely affected.
38	Requiring fixed pitch licensees to be present on pitches at all reasonable times	8B	Requiring pitch licensees to be present on pitches at all reasonable times	Similar provision
39	Requiring fixed pitches to be kept in safe and clean condition	--	No such provision	Existing licensed hawkers in the ProRC area will not be adversely affected. The repeal of subsection (1) which involves metered fixed pitch was inadvertently omitted. A Committee Stage Amendment will be introduced.
40	Design and construction of stalls on fixed pitches are to be in accordance with specifications approved by the Director	23, 24	Hawkers to conform to requirements regarding stalls and equipment as set out in Schedule 1; restriction on size of stalls	Existing licensed hawkers in the ProRC area will not be adversely affected. Many provisions in Schedule 1 of the RC Bylaws are obsolete.
41	Director may permit the erection of wall stalls on fixed pitches	--	No such provision	Existing licensed hawkers in the ProRC area will not be adversely affected.

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
42	Holders of itinerant hawker licence may provide and hawk from mobile stalls designed and constructed in accordance with specifications approved by the Director	--	No such provision	In practice, the provision now only applies to itinerant hawkers selling frozen confectionery in light goods vehicle.
43	Director to cause approval and conditions to be endorsed on licence under sections 40 to 42	--	No such provision	--
44	Restriction on the use of stalls which is for hawking only	27	Restriction on the use of stalls which is for hawking only	Similar provision
45	Prohibiting licensee to erect stalls which is not readily movable from a fixed pitch; requiring licensee to remove stall from the pitch when he ceases to be entitled of such use	--	No such provision	Existing licensed hawkers in the ProRC area will not be adversely affected.
46	Prohibiting licensee to damage pitch	--	No such provision	- Ditto -
47	Prohibition on joining stalls	--	No such provision	- Ditto -

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
48	Prohibiting licensees to place commodities and equipment outside boundaries of pitches	26	Prohibition on placing paraphernalia outside the boundaries of marked pitches	Similar provision
49	Control on the use of tables and stools by holders of fixed-pitch hawker licences authorized to deal in drink or cooked food	--	No such provision	Existing licensed hawkers in the ProRC area will not be adversely affected.
50	Providing for the maintenance of equipment in safe and clean condition	20	Providing for the maintenance of equipment in safe and clean condition	Similar provision
51	Providing for the provision of refuse bins	20B	Providing for the provision of refuse bins	- Ditto -
52	Restriction on the hygienic condition of the equipment, cooked food and drink to be provided or sold by licensees dealing in drink or cooked food	20A	Restriction on the hygiene condition of the equipment, cooked food and drink to be provided or sold by licensees dealing in drink or cooked food	The provision on the use of wholesome water is incorporated into the proposed Regulation for better hygiene control.
52(2)	<i>Providing for the use of wholesome water in the preparation of drink or cooked food</i>	29	Providing for the use of wholesome water at cooked food stalls	

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
53	Prohibiting licensee to erect stall in such a manner as to cause obstruction	17	Prohibiting hawkers to behave in importunate manner	The RC provision is incorporated for better control.
53(2)	<i>Prohibiting hawkers to behave in importunate manner</i>			
54	Prohibition on the installation of electrical equipment without approval of Director	--	No such provision	Existing licensed hawkers in the Pro RC area will not be adversely affected.
55	Provision for licensee to comply with conditions of licence	--	No such provision	This is to facilitate enforcement of licensing conditions.
55A	<i>Director to allocate pitches in established hawker bazaars</i>	31	Council to allocate pitches in established hawker bazaars	The insertion of section 55A will take care of hawking activities in hawker bazaars in the Pro RC area. Pro RC has re-sited on-street hawkers to off-street hawker bazaars to minimize environmental nuisances. There are at present 8 such bazaars in the Pro RC area.

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<u>Section</u>	<u>Description</u>	<u>Section</u>	<u>Description</u>	
56	Offences and penalties	32	Offences and penalties	Amendments have been made in the proposed Regulation to take into account the addition of sections 5A, 12(1A) and 55A(2).
57	Magistrate may recommend cancellation or suspension of licence	--	No such provision	The existing licensed hawkers in the Pro RC area will not be adversely affected.

A:comparison 3

II. Provisions contained in Hawker (RC) Bylaws only

<u>Hawker (RC) Bylaws</u>		<u>Reason for not incorporating such provision into the proposed Hawker Regulation</u>
<u>Section</u>	<u>Description</u>	
4(2)(b)	A hawker may continue to hawk for a period of 2 months after expiry of licence	The provision is no longer required.
6	Council may prescribe and gazette any area in which hawking by means of mobile vans is permitted	Such provision has become obsolete.
9	Special provisions as to licences to hawk by means of mobile van for sale of food	At present, no such licences are issued by the ProRC. The provision is considered obsolete.
11	Issue of pitch cards to licensees of fixed pitches	Pitch cards are no longer necessary as the issue of hawker badges (section 10A) already serves the purpose.
21	Requiring the removal of equipment etc. at the close of trade each day	The provision has become obsolete.
22	Requiring the display of pitch cards	The provision has become obsolete as hawkers are already issued with hawker badges which should be worn at all times while hawking.
25	Restriction on hours of business for hawkers of cooked foods and for other hawkers	Similar provision has been included in section 8 of the proposed Regulation.
30	Prohibition on sale and consumption of intoxicating liquor at stalls	The provision has become obsolete.

<u>Hawker (RC) Bylaws</u>		<u>Reason for not incorporating such provision into the proposed Hawker Regulation</u>
<u>Section</u>	<u>Description</u>	
Schedule 1	Details and diagrams on construction of cooked food stalls, fixed pitch stalls and boot-black's box	There is no on-street fixed-pitch hawkers in the ProRC area. Many provisions in Schedule 1 of the RC Bylaws are obsolete.

A:comparison 2