

**立法會**  
***Legislative Council***

LC Paper No. CB(2)970/11-12  
(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, 13 December 2011, at 2:00 pm**  
**in Conference Room 3 of the Legislative Council Complex**

- |                                  |                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Members present</b>           | : Hon Tommy CHEUNG Yu-yan, SBS, JP (Chairman)<br>Hon WONG Yung-kan, SBS, JP (Deputy Chairman)<br>Hon Fred LI Wah-ming, SBS, JP<br>Hon TAM Yiu-chung, GBS, JP<br>Hon Vincent FANG Kang, SBS, JP<br>Hon WONG Kwok-hing, MH<br>Dr Hon Joseph LEE Kok-long, SBS, JP<br>Hon KAM Nai-wai, MH<br>Dr Hon LEUNG Ka-lau<br>Hon Alan LEONG Kah-kit, SC<br>Hon WONG Yuk-man |
| <b>Members attending</b>         | : Hon Starry LEE Wai-king, JP<br>Dr Hon Priscilla LEUNG Mei-fun, JP<br>Hon WONG Sing-chi<br>Dr Hon PAN Pey-chyou<br>Hon Tanya CHAN                                                                                                                                                                                                                              |
| <b>Public Officers attending</b> | : <u>Item IV</u><br>Dr York CHOW Yat-ngok, GBS, JP<br>Secretary for Food and Health<br><br>Mrs Marion LAI CHAN Chi-kuen, JP<br>Permanent Secretary for Food and Health (Food)                                                                                                                                                                                   |

Mr Tony LI Yeuk-yue  
Principal Assistant Secretary for Development  
(Planning and Lands) 2

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

Mr Wilson SO Ying-leung  
Assistant Director of Planning/New Territories  
Planning Department

Ms Karen CHAN Pui-yee  
Assistant Director (Estate Management) (Lands  
Administration Office/ Headquarters)  
Lands Department

Mr CHEUNG Tin-cheung  
Assistant Director/Existing Buildings 2  
Buildings Department

Item V

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

Ms Vivian SUM Fong-kwang, JP  
Deputy Director of Food and Environmental Hygiene  
(Environmental Hygiene)

**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 Nos. CB(2)505/11-12 and CB(2)508/11-12)

The minutes of the meetings held on 20 October 2011 and 8 November 2011 were confirmed.

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

(LC Paper No. CB(2)376/11-12)

2. Members noted that a DVD produced by the Centre for Food Safety to promulgate information on Nutrition Labelling to the public had been issued since the last meeting.

**III. Items for discussion at the next meeting**

(LC Paper Nos. CB(2)510/11-12(01) and (02))

3. Mr WONG Kwok-hing proposed to discuss the item "Presence of cesium in milk powder" at a special meeting or a regular meeting. Mr KAM Nai-wai said that the Public Accounts Committee ("PAC") had discussed the related issues of the nutrition labels of and presence of harmful substances in milk powder. The report of deliberations of PAC was under preparation. The Chairman suggested and members agreed that the item would be discussed by the Panel after PAC issued the report.

4. Members agreed to discuss the following items proposed by the Administration at the next meeting to be held on 10 January 2012 -

- (a) Review of liquor licensing;
- (b) Review of ex-gratia allowance mechanism for marine works; and
- (c) Review of Fisheries Development Loan Fund.

*(Post-meeting note:* At the request of the Administration and with the concurrence of the Chairman, items (b) and (c) above would be deferred to the meeting in February/March 2012 whereas item (a) and an item "Organic food" would be discussed at the next meeting. The Chairman also agreed that an item "Announcement mechanism of the Food Surveillance Programme implemented by the Centre for Food

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"Safety" proposed by Mr Fred LI would be discussed at the next meeting. To allow sufficient time for discussion, the Chairman has directed that the meeting be advanced to start at 2:00 pm. The agenda for the next meeting on 10 January 2012 was issued to Members vide LC Paper No. CB(2)602/11-12 on 16 December 2011.)

**IV. Columbaria - licensing scheme and consultation document**  
(LC Paper Nos. CB(2)510/11-12(03) and (04))

5. The Chairman said that this item was proposed by the Administration in November 2011 and it should have sufficient time to prepare the discussion paper. The Chairman expressed regret that the Administration only provided the soft copy of the paper to the Panel a few hours before the meeting and Members did not have sufficient time to peruse the paper. Since the Administration's paper was received after the agreed deadline, the Chairman consulted Members on whether this item should be discussed or removed from the agenda.

6. Ms Tanya CHAN echoed the Chairman's comment and criticized the late submission of paper by the Administration. Ms CHAN said that the Administration had also tabled the paper at the Panel meeting on 6 July 2010 when the first public consultation of columbarium policy was discussed. Ms CHAN said that although the Administration would introduce its paper with the aid of a Powerpoint presentation, it was hardly viable for Members to peruse the paper and properly raise their questions and concerns about the consultation document. Ms CHAN said that as the relevant public officers had already attended the meeting, and members of the public who were concerned about the proposed regulation of private columbaria demonstrated at the entrance of the Legislative Council ("LegCo") Complex, she suggested discussing the item at this meeting to avoid further deferral. Ms Chan also proposed that the Panel should hear the public views on the columbaria licensing and its regulation at a future meeting. All other Members present agreed to discuss the item at this meeting. Mr Fred LI suggested that the Panel should further discuss the issue after the Panel had received public views.

7. Secretary for Food and Health ("SFH") apologized for the late submission of paper and hoped that the detailed Powerpoint presentation made at the meeting could provide Members with a broad idea of the proposals in the consultation document. He explained that commensurate with the importance attached by LegCo Members to this subject, the Administration had all along wished to launch the consultation at the Panel meeting on 13 December 2011, lasting for about three and a half months. As

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the subject was both complex and controversial which entailed prolonged discussion within the Administration, the paper for the meeting was not finalized until shortly before the meeting.

8. The Chairman concluded that the Panel would discuss the item at this meeting and arrange a special meeting in mid-March 2012 to hear the deputation's views on the proposals in the consultation document before the end of the consultation period. He hoped that the Administration would timely provide the papers for meetings in the future. The Chairman suggested that the Administration should consider providing the papers to the Panel and embargoing its release to the public until a specific time in similar situation in the future.

9. SFH briefed Members on the proposed licensing scheme for private columbaria ("the Scheme") as detailed in the Administration's paper. He added that in the first public consultation, the public generally hoped that the Government could be pragmatic and sensitive when dealing with those columbaria which had been in existence for many years. Therefore, the Scheme should operate in a reasonable, proportional, focused and targeted manner, balancing properly the views of various stakeholders. SFH reiterated that the Scheme should give due respect to the traditional Chinese values of reverence for ancestors and that any measures that might upset the resting place of the deceased should not be contemplated lightly. There were also opinions that the proposed Scheme should help alleviate the impact of private columbaria on neighboring communities. SFH said that there was a great public demand for niches. The private columbaria would not only boost niche supply, but also offer more choices for consumers. The regulatory regime should facilitate the healthy and sustainable development of the industry.

10. On the supply of public columbarium facilities, SFH said that the construction of a new public columbarium at Kiu Tau Road, Wo Hop Shek would be completed in July 2012, providing about 43 000 niches. The Administration had identified 24 potential sites in 18 districts for columbarium development. Among them, the Diamond Hill Columbarium extension project and Cheung Chau Cemetery extension project had secured the support of the relevant District Councils ("DC"). He said that technical feasibility studies of the remaining sites were underway and the Administration would be consulting the relevant DCs. SFH concluded that together with the supply of niches in Chinese Permanent Cemeteries, the Administration estimated that there would be about 120 000 new niches in the coming five years, and hundreds of thousands of niches in the medium to long run.

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11. The Permanent Secretary for Food and Health (Food) ("PSFH(F)") briefed Members on the details of the consultation document with the aid of a Powerpoint presentation.

(*Post-meeting note:* The softcopy of the Powerpoint presentation materials was issued to Members vide LC Paper No. CB(2)587/ 11-12(01) on 13 December 2011.)

12. Ms Tanya CHAN commented that the Part A and Part B of the information on private columbaria published by the Development Bureau ("the Information") were ambiguous. The Information did not clearly indicate whether the columbaria could genuinely meet the licensing requirements and it was insufficient to help the consumers make their choice. Ms CHAN also commented that the stand of the Administration in the second public consultation document was regressive in terms of the right to use the premises and doubted that this was resulted from the inadequate supply of public niches. She queried the rationale of the Administration that it would be easier to increase the supply of niches by private columbaria than the public columbaria. If the licensing criteria were not clear, it would be difficult for the proposed statutory Private Columbaria Licensing Board ("Licensing Board") to consider the applications.

13. Ms Tanya CHAN expressed concern about the acceptance of rented premises with rental contract of five years or above instead of premises owned by the operators for running columbaria as proposed in the consultation document. Mr Alan LEONG echoed Ms CHAN's view. Mr LEONG said that such concession was obviously a regressive step as it had been proposed in the first public consultation document in 2010 that the columbarium operator should be the owner of the premises occupied by the columbarium.

14. SFH explained that as there were some pre-existing private columbaria currently operating at rented premises, the Administration had to consider their situations. PSFH(F) added that the Scheme emphasized the long-term commitment of the operators in providing columbarium services. Certain pre-existing private columbaria were operating in non-self-owned premises, but they had sound track record of business practices and could provide proof on their rights to continue to use the premises/site involved for at least five years. It was neither reasonable nor pragmatic to cease their business merely because they were not the owner of the premises.

15. Mr WONG Kwok-hing expressed support for the establishment of the proposed Licensing Board to act as the licensing authority of private columbaria. He commented that the time span of 54 months for the

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legislative process and the transition period was too long and asked whether the Administration could shorten the time of the process.

16. Ms Tanya CHAN also opined that it was so late for the Administration to introduce the relevant bill into LegCo in the fourth quarter of 2013. She recalled that at the last discussion, Members had expressed support for the legislation to regulate private columbaria to be done as quickly as possible. She urged SFH to speed up the legislative process. Mr Alan LEONG echoed Ms CHAN's view that the Panel had discussed the issues relating to columbaria for more than two years and the Administration had already set up a task force in 2009. He opined that the Administration had been dragging on the matter. As detailed in the Administration's paper, one of the problems which were difficult to handle was the regulation of pre-existing columbaria before the launch of the Scheme. This problem would be worsened as time went by.

17. SFH responded that the legislation for regulating private columbaria touched on a complex social issue with divergent public views and was sensitive given the traditional concepts. He said that the Administration needed to outreach to the existing private columbaria to study their operations. Certain operators of the columbaria in Part B of the Information had proactively applied for regularization in order to meet the requirements for inclusion in Part A. As different private columbaria had different regularization requirements to meet, substantial time was needed to draw up the details. SFH said that the first public consultation had collected views from different angles. The scope of the second public consultation would be more focused and would be completed in March 2012. Around 12 months would be needed for the drafting of the bill. Internal deliberations by the Administration would then follow before the advice of the Executive Council was sought. SFH said that the soonest possible time to introduce the bill into LegCo would be towards the end of 2013.

18. Mr WONG Kwok-hing said that as the proposed Licensing Board would give temporary suspension from liability arising from the operation of a private columbarium without a licence or an exemption, those pre-existing private columbaria which were unlikely to comply with the licensing requirements might rush to sell off their niches before they were banned. He urged the Administration to enhance the regulation during the transition period by snap shooting the current situation of the pre-existing private columbaria in Part B of the Information and disallowing them to further attract new customers.

19. SFH explained that in applying for temporary suspension from liability, it would be for those pre-existing columbaria to satisfy the Licensing Board

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that he/she had a reasonable chance to regularize his/her operation within a reasonable period of time. The Licensing Board would decide, on the merits of the each case, whether to give such temporary suspension from liability, and if so, the period of such and the conditions to be attached. The Administration would collect the public view on the conditions to be considered.

20. Mr WONG Sing-chi commented that the proposed exemption from the Scheme was too lenient in that only private columbaria which posed obvious or imminent danger in terms of building and fire safety would not be exempted from the Scheme. He queried whether the proposed exemption arrangement was the withholding of law enforcement actions. He also opined that the pre-existing private columbaria which breached the regulations, broke the laws or occupied Government lands should not be exempted as they would not be licensed. They should be remarked in Part B of the Information so that the public could obtain clearer information about them. Mr KAM Nai-wai echoed Mr WONG's view that the proposed exemption and the temporary suspension from liability from the Scheme had given a message to the public that the Scheme was obviously regressive. He urged SFH to clarify the details of such arrangements.

21. Mr WONG Sing-chi also suggested that Part A and Part B of the Information should be updated with the new regulatory conditions added.

22. SFH responded that the exemption arrangement would only be considered for the pre-existing private columbaria in existence for a long time, which met specified criteria though they were not in compliance with all the relevant statutory and Government requirements. Currently, the Development Bureau and the relevant departments took law enforcement actions against the non-compliant columbaria in accordance with the relevant existing Ordinances. It had also been remarked in Part B of the Information the details of non-compliance of individual columbaria.

23. Mr WONG Sing-chi further asked the reasons for the Administration not taking any law enforcement actions against the alleged non-compliant columbarium, namely, Giglok temple, and the progress of any follow up actions. Assistant Director (Estate Management) (Lands Administration Office/Headquarters) ("AD(EM)(LAO/H)") responded that subsequent to the judicial review of Giglok temple's case, law enforcement action had been taken by the Lands Department. As the case was under judicial proceedings, further details could not be given.

24. Mr KAM Nai-wai questioned whether the Scheme was designed to protect the consumer rights. He opined that although the Scheme would

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require the licensee to handle interred cremains before the cessation of the columbarium operation under different situations, consumers would not be able to get back their money if the operator went bankrupt. Mr KAM asked how the Administration would regularize the pre-paid arrangement of the private columbaria, for example, by disallowing the operators to use the money which should be retained for long-term expenditure. Mr Alan LEONG echoed Mr KAM's view. He gave a metaphor that the Administration was asking the consumers to hope for the best. The consumers had to seek information from the Town Planning Board and the relevant Government departments themselves to make their own choices.

25. SFH responded that the Scheme would require a licensee to apply for licence renewal once every five years and the Administration would examine whether the columbarium could continuously meet the licensing requirements. He said that the licensing criteria on protecting the interests of consumers were detailed in section 4.7 of the consultation document, including the contract with consumers, handling of cremains upon business cessation, register of patrons, management plan and maintenance fund, etc. As many private columbaria did not have these good practices in place, implementing such licensing criteria would go a long way in ensuring the sustainable development of private columbaria. These criteria could help ensure the columbaria to sustain their operation. If a columbarium was found not to have met any of these criteria at the stage of licence renewal, the Licensing Board would require the operator to immediately rectify the non-compliance, or else the renewal of the licence might be in jeopardy. SFH said that the Information captured relevant information about the situation of individual private columbaria, so as to help provide consumers with more information before enactment of the legislation to regulate private columbaria. After the legislation on licensing of columbaria was in place, only the licensed or exempted private columbaria could legally continue their operation.

26. The Chairman asked how the interests of consumers who had paid the charges for permanent services from the columbaria could be protected by the Scheme. He opined that the columbaria should only charge for at a maximum of five year service. He asked whether the Scheme would disallow columbaria to request pre-payment for permanent services and regulate the refund arrangement to protect consumer interest.

27. SFH said that the Scheme would require individual columbarium operators to set up a maintenance fund on separate accounts for sustainable operation. The operators were also required to enter into a contract with consumer over the ownership/terms of use of a niche. The consumer could decide to purchase niches only if he/she accepted the terms and conditions detailed in the contract. SFH added that these licensing requirements would

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significantly enhance the protection of consumers' interests.

28. The Deputy Chairman said that the Democratic Alliance for the Betterment and Progression of Hong Kong supported the proposed regulation of private columbaria operation. He said that consumers preferred long-term arrangement and settlement of the cremains of the deceased. He expressed worry about whether the licences would definitely be renewed if the columbaria could meet the licensing criteria so that they could sustain their business. He also said that the prolonged legislative process and transition period would create loopholes. He asked how the Administration would control fraudulent behaviour of illegal columbarium operators. He also reflected that complaints on environmental nuisances from columbaria during Ching Ming and Chung Yeung festivals were received from the neighbouring residents.

29. SFH stressed that before the commencement of the Scheme, relevant authorities would continue to take enforcement actions against any private columbaria that breached the statutory and Government requirements under their respective mandate. He added that the Information published by the Development Bureau would assist members of the public to make informed decisions when purchasing niches.

30. The Deputy Chairman said that the columbaria for pet animals would create new problems on environmental nuisances. He asked whether the Administration would regulate their operations as well. SFH responded that currently the Administration did not have any plan to regulate the columbaria for pet animals but the issue could be further studied.

31. Mr Fred LI asked whether the definitions of cremains, human remains and exhumation, etc were still pending the court's judgment or whether the Administration would handle them collectively under the Scheme. AD(EM)(LAO/H) responded that the relevant court case was still on-going.

32. Mr Fred LI further said that the undertakers of burials were legitimately allowed to temporarily store cremains in their licensed premises as a natural part of their routine business until they could be settled at permanent niches. There were complaints that certain cremains had been kept at these temporary storages for a very long time and created environmental nuisance, especially during the periods of Ching Ming and Chung Yeung Festivals. He expressed worries that these temporary storages would not be regulated under the exemption arrangement in the proposed Scheme. Mr LI asked how the Administration could confirm that this kind of cremains storage was genuinely temporary.

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33. Ms Tanya CHAN also said that certain temporary cremains storages in Hunghom were even more decent than the public columbaria. The consumers would be unlikely to remove the cremains of the deceased from these temporary cremains storages if they were able to be exempted from the licensing requirements.

34. SFH responded that the undertakers of burials were currently regulated under the Undertakers of Burials Regulation (Cap. 132CB). The storage of cremains in such premises was meant to be temporary. The Director of Food and Environmental Hygiene ("DFEH") added that the Food and Environmental Hygiene Department ("FEHD") would conduct regular inspection of licensed undertakers of burials to ensure that they complied with the licensing requirements. He said that there were genuine needs for this kind of temporary storage while families of the deceased were awaiting permanent niches at public or private columbaria.

35. Mr WONG Yuk-man criticized the Administration for the late provision of paper and said that there was insufficient time for him to peruse the paper and raise questions properly. He said that the item ought to be removed from the agenda at this meeting. The Chairman advised Mr WONG that at the beginning of the meeting, Members were consulted on whether this item should be discussed or removed from the agenda, and Members agreed to discuss the item at this meeting and arrange a special meeting in mid-March 2012 to receive public views.

36. The Chairman asked the Administration to clarify whether it was proposing two different licensing regimes separately for the operators of pre-existing columbaria and the new applicants after the Scheme was launched. Apparently, the operators of pre-existing private columbaria were not required to own the premises that the columbaria was located, while the new applicant should be the owners of the premises. If it was in the affirmative, whether the licence of a columbarium would be revoked if the operator sold the premises it occupied, or he/she could sell the premises and rent them from the new owner to continue the business. PSFH(F) responded that the Administration was open-minded on this and we welcomed public views on whether a mandatory requirement on premises ownership should be introduced.

37. The Chairman further asked whether the 18-month transition period was applicable to the pre-existing private columbaria who were likely to obtain the licences as well as the new applicants after the Scheme was launched. SFH responded that it was applicable to the pre-existing private columbaria only. After the Scheme was launched, operators of all new columbaria will have to obtain a licence before they started their operation.

**V. Management of fixed hawker pitches at Fa Yuen Street**  
(LC Paper Nos. CB(2)510/11-12(05) and (06))

38. SFH briefed the Panel on a package of measures and suggestions as detailed in the Administration's paper to reduce the fire risks arising from fixed hawker pitches at Fa Yuen Street.

39. Mr WONG Kwok-hing said that the Federation of Hong Kong Kowloon New Territories Hawker Associations and other representatives of stall hawkers were demonstrating outside the LegCo Complex. They presented him with a petition from which he noted that they wished to cooperate with the Administration to improve the order of hawker areas, with a view to helping people to live and work in contentment. They also accepted the arrangement of "removing the commodities without dismantling the stalls at night". Mr WONG was of the view that the hawkers had made a major concession in this regard and asked whether further discussion with them could be arranged in order to reach a consensus on the issue. Mr WONG further said that the hawkers considered the size of fixed pitch approved by FEHD (i.e. 3 feet × 4 feet or 4 feet × 6 feet) too small that trading outside the permitted hawker area was unavoidable. They urged the Administration to review the existing requirements for stall size.

40. Mr WONG Kwok-hing considered that the mechanism for cancellation of hawker licenses proposed in paragraph 12 of the Administration's paper was too harsh and might not be effective to reduce the fire risks posed by fixed hawker pitches. He expressed reservations about such stringent measure and took the view that the Administration should consider increasing the existing penalties such as raising the fines. Mr WONG requested the Administration to discuss and seek consensus with the hawker associations, and suggested holding a meeting to gauge the views of stall hawkers on the proposed mechanism.

41. SFH thanked the hawker associations for their views on the issue. He said that the Administration was well aware that hawkers belonged to the grassroot sector and they made their own living by operating small businesses. As such, the Administration had all along considered that the continuous operation of fixed pitches should be allowed and further improved. However, it was the duty of stall hawkers to abide by the licensing conditions. SFH pointed out that subject to the findings of investigation, the fire did start in the area of the nearby fixed pitches, and the storage of commodities at the hawker bazaar might have also led to the rapid spread of fire to the adjacent buildings. In the circumstances, the Administration considered it necessary to tighten up regulation over hawker stalls. He had listened to the views of Members on the incident at the Council meeting held the previous week and

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most of the Members agreed that the Administration should strengthen enforcement regarding non-compliances in the hawker bazaars. SFH stressed that FEHD had a responsibility to take enforcement actions against irregularities. While he understood the wish of the hawkers to have more space for business, the size of the stalls was set out in the hawker licences issued under existing regulations. He pointed out that detailed study was needed if there was to be re-ordering of stalls at hawker permitted places. As the Fire Services Department ("FSD") had advised that fire escape points or staircases of buildings should not be blocked by hawker stalls, enforcement actions would be taken according to the current legislation. The Administration hoped that hawkers could operate their stalls in accordance with the licensing conditions.

42. On whether the improvement options of "setting up stalls only during trading hours" and "removing the commodities without dismantling the stalls at night" would be considered, SFH pointed out that each district had its own concern. The Administration would not allow hawker bazaars to become open-air warehouses. Excessive overnight storage of commodities would render the stalls more prone to fire, arson, vandalism or illegal occupation. The Administration would discuss the implementation of various improvement measures with representatives of the hawker associations and the DCs concerned.

43. Regarding the proposed mechanism for cancellation of hawker licences, DFEH said that FEHD put forward such proposal by making reference to similar mechanisms applicable to other FEHD licensees or public market tenants. He explained that as some hawkers repeatedly and blatantly breached the law and the licence conditions despite multiple prosecutions, the introduction of such a mechanism was proposed with a view to achieving greater deterrent effect. Having considered that the business nature of hawkers was similar to that of public market stalls, it was proposed to model the mechanism for cancellation of hawker licences along the existing arrangements for the termination of tenancy for market stall tenants.

44. DFEH elaborated that currently, if four offences resulting in conviction under the Public Health and Municipal Service Ordinance (Cap. 132) ("the Ordinance") or its subsidiary legislation were registered against a public market stall's tenant, agents or employees within a period of 12 months, DFEH would issue a "notice of intended termination of tenancy" to terminate the tenancy agreement. As for licensed hawkers, it was proposed that if a licensed hawker was convicted for six times within three months for breaching any hawker-related provisions under the Ordinance or its subsidiary legislation, the Hawker Regulation (Cap. 132AI), DFEH might consider cancelling his/her hawker licence in accordance with the mechanism.

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DFEH advised the Panel that during the special meeting with the Yau Tsim Mong District Council about two weeks ago, some DC members were of the view that the existing enforcement efforts were insufficient and fines alone could not deter repeated offences committed by stall hawkers. They expressed support for introducing a demerit point/licence cancellation mechanism. The Administration wished to receive the views during the coming two-month consultation period from the relevant stakeholders, including the DCs concerned and hawker associations, in order to formulate an appropriate mechanism.

45. Mr WONG Yuk-man criticized that it was irrational for FEHD not to strengthen its enforcement until the recurrence of fire at Fa Yuen Street. The Administration advised the Panel that it had taken a series of improvement measures and had instituted a number of prosecutions against non-compliances in hawker bazaars since the last fire in December 2010. However, it was not until the Chief Executive commented on the inadequacy of these measures that FEHD tightened up its enforcement immediately. Mr WONG was strongly dissatisfied with the Administration's inconsistency in the enforcement of regulations, which had caused confusion to stall hawkers. FEHD had a responsibility to review its enforcement approach. Frequent changes of Government policies would lead to social instability. He pointed out that the cause of the fire was still under investigation, but the Administration had already proposed a package of measures aimed at reducing the fire risks posed by fixed hawker pitches at Fa Yuen Street, which seemed to suggest that the fire tragedy with nine people killed and 34 injured was caused by the fixed hawker pitches. Mr WONG further said that it was the time for hawkers to earn money with Chinese New Year approaching. The proposed measures might push them into dead end and the market would subsequently be monopolized by consortium. He opined that the Administration had overdone its tightening by elevating the penalty to revocation of licence.

46. Mr Vincent FANG criticized that many industries such as poultry farming, fishery, public entertainment and newspaper hawkers had been deprived of the opportunity to survive. As Chinese New Year was approaching, Mr FANG was concerned that when the affected stall hawkers at Fa Yuen Street could be allowed to resume their business. He asked whether consideration could be given to the arrangement of "removing the commodities without dismantling the stalls at night".

47. In respect of the proposal to cancel the licence if the hawker was convicted for six times within three months, Mr Vincent FANG enquired about the rationale behind it and sought clarification on whether there would be a carry-forward of the number of convictions after every three months.

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Mr FANG was delighted to hear at this meeting that the Administration had no intention to clamp down on stall hawkers. However, he was unaware of any measure taken by the Administration so far to improve the operation of fixed hawker pitches.

48. SFH stressed that, from the hawker policy point of view, the Administration had no intention to clamp down on the fixed hawker pitches, which were currently located at 43 streets in Hong Kong. It was considered that the hawking trade should be retained in view of its traditional characteristics. He pointed out that although only a minority of stall hawkers repeatedly violated the regulations, it was still necessary to introduce a mechanism for cancellation of hawker licences. The Administration wished to collect the public views on the proposals during the consultation period. SFH remarked that the Administration hoped that the fixed pitch hawkers at Fa Yuen Street could resume their business as soon as possible and the Government was not proposing to implement the arrangement of "dismantling the stalls after trading hours" immediately, but stall hawkers were required to comply with the existing licence conditions and not to store commodities outside the permitted stall areas overnight. The Administration had repeatedly relayed this message to stall hawkers and had reached a consensus with them. SFH further said that with the advice from FSD that some locations, particularly spaces in front of building staircases, were not appropriate for setting up hawker stalls, the Administration had to tackle this problem in due course. Currently, the Administration's top priority in improving the operating environment of hawker bazaars was to ensure that the fixed hawker pitches would not become fire traps when they were left unattended at night.

49. On the timing for the resumption of operation of fixed hawker pitches at Fa Yuen Street, DFEH advised the Panel that the Police, FSD and the Buildings Department were still conducting investigations at the fire scene. The area being blocked off by the Police would not be released until safe access was ensured. SFH added that the timetable would be determined by the progress of these departments in inspecting the structures, signboards and canopies of the affected buildings.

50. With respect to the enforcement taken by FEHD, DFEH clarified that the Administration had never attributed the cause of the fire tragedy to fixed hawker pitches. The objective was just to remove or reduce the fire safety risk posed by inflammable stall canopies (particularly those connected to nearby buildings) and overnight storage of goods outside permitted stall areas. During trading hours, however, some flexibility was given to hawkers for limited extension of their trading areas, provided that the goods would not obstruct fire escape and emergency vehicle access. The enforcement action

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taken by FEHD would also focus on illegal sub-letting of hawker stalls. DFEH said that if hawkers failed to comply with the aforesaid requirements, enforcement action would be taken.

51. Concerning the implementation of the proposed mechanism for cancellation of hawker licences, DFEH explained that if a licensed hawker was convicted for six times in the past three months for specified offences, DFEH would consider immediate cancellation of his/her hawker licence. The Administration also suggested that if the licensee was dissatisfied with the decision, he/she might make representation to DFEH within seven days. If DFEH affirmed the decision to cancel the hawker licence and the licensee disagreed with the decision, the licensee might appeal to the Licensing Appeals Board ("LIAB") within 14 days in accordance with the Ordinance. The licensee might also further appeal to the Municipal Services Appeals Board within 14 days if he/she was aggrieved by the decision of LIAB. DFEH indicated that when compared to the mechanism for termination of tenancy of public market stalls, the proposed mechanism for revocation of hawker licences was more lenient.

52. The Deputy Chairman said that instead of building safety problem, it was fixed hawker pitch which was accused of causing the fire tragedy at Fa Yuen Street. The accident revealed the Administration's inconsistency in taking enforcement actions against stall hawkers. Concerns were raised as to whether there were standing procedures to deal with non-compliance cases. He pointed out that the proposed measures, which would extend to all other street bazaars in Hong Kong, had aroused strong opinions and opposition from stall hawkers. He hoped that the Administration would discuss with stall hawkers in order to come up with a consensus. The Deputy Chairman also reminded the Administration to act prudently when handling the matters, particularly the feasibility of the arrangement of "setting up stalls only during trading hours". He asked whether the Administration would formulate a new hawker policy after the completion of the two-month public consultation.

53. SFH reassured members that the Administration had no intention to phase out fixed hawker pitches at the moment. Instead, it endeavoured to improve their operation and ensure that the hawking activities were conducted in a safe and orderly manner. Though there might be inadequacies in some aspects of the existing laws, the Administration had to take enforcement actions against any infringement in accordance with the relevant provisions. SFH pointed out that currently there were about 4 900 hawker stalls, around 1 100 of them were required to be set up only during trading hours. The Administration would not require all the stall hawkers to implement such mode of operation given the technical difficulties that hawkers might encounter in the daily dismantling and setting up of stalls. At

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the next stage, the Administration would consider various proposals and discuss with DCs and representatives of stall hawkers. SFH said that the arrangement of "keeping only the metal frames for display but removing the goods" should reduce hawker stalls' fire risks. However, stall hawkers were still required to store their goods inside FEHD-approved enclosed stall structures or cabinets which were built with fire-resisting materials as their existing practice of storing goods outside their stalls after business hours would increase fire risk. SFH further said that the fixed pitch hawkers at Fa Yuen Street could resume business as soon as they were compliant with FEHD's requirements. Given that each street bazaar had its own operating environment and characteristics, the Administration considered it unnecessary to apply the same mode of operation to all hawker stalls throughout the territory as long as their operation did not pose any fire safety hazards. SFH assured members that in formulating a long-term hawker policy, the Administration would consult the relevant stakeholders with a view to enabling sustainable development in hawking trade.

54. Mr KAM Nai-wai said that according to the Administration's paper, the former Urban Council had gradually reduced the number of hawkers since early 1970s by stopping the issue of new hawker licences. As a result, the number of licensed hawkers had dropped from 20 000 in the late 1980s to some 7 000 at present. He asked whether the existing Government policy was still to gradually phase out stall hawker. With his past experience in assisting stall hawkers, Mr KAM found that there were public expectations and community needs to retain hawking trade. To provide support and a way for making a living to hawkers, he asked whether consideration could be given to making a change in the current policy.

55. While supporting stringent enforcement taken by the Administration against serious offences, such as sub-letting of hawker stalls or illegal transfer of hawker licences, Mr KAM Nai-wai asked whether assistance could be given to stall hawkers in respect of storage of goods and erection of fixed pitches. To facilitate the management and regulation of hawker stalls, Mr KAM suggested that the Administration should consider identifying some locations for stall hawkers to store their goods and providing them with fixed pitches with a standardized design.

56. SFH responded that the Administration had not imposed a limit on the number of licensed hawkers, and would consider various measures to assist the operation of hawker stalls. Some LegCo Members and DC members had proposed the establishment of open-air bazaars in various districts. The Administration would consider such a proposal if a local organization was able to identify a suitable site with the local support and willing to operate such a bazaar, and there was no environmental hygiene and food safety

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concerns. SFH said that it was worth retaining street hawking as it had a long history in Hong Kong. The Administration would consult LegCo Members and the relevant stakeholders in formulating long-term policy on hawkers.

57. Dr Priscilla LEUNG said that equal weight should be given to the interests of stall hawkers, shop owners and residents at Fa Yuen Street. She criticized that the proposal to set up stalls only during trading hours was not a good option due to the noise nuisance caused by the daily dismantling and setting up of stalls. She was dissatisfied that the Administration had not identified the root cause of the incident and simply solved the problem of fixed hawker pitch by initiating prosecutions against and issuing warning letters to hawkers. There should be a long-term planning of fixed hawker pitches given the traditional characteristics of hawking trade.

58. On the proposal to equip hawker stalls with fire service installations, Dr Priscilla LEUNG enquired about the assistance to be provided by the Administration in perfecting the fire-resisting quality of hawker stalls. Dr LEUNG further said that the shop owners affected by the last fire at Fa Yuen Street in 2010 indicated that they had to bear the repair costs by themselves as insurance companies refused to process their claims and banks declined their loan applications. Dr LEUNG called on the Administration to provide assistance to them.

59. SFH responded that the Administration was studying various measures as proposed in paragraphs 16 to 23 of the Administration's paper, and would consult DCs and the relevant stakeholders. The Administration would report to the LegCo once the improvement proposals were available.

60. Ms Starry LEE asked whether financial support would be given to the affected stall operators in erecting fixed pitches that could be approved by FEHD. She said that the stall hawkers at Fa Yuen Street had requested early resumption of business, but they were unable to replace the stall facilities within a short period of time in order to fulfill FEHD's requirements. If the stall operators promised to rectify the irregularities after Chinese New Year, Ms LEE enquired whether the Administration could release the closed area of Fa Yuen Street gradually so that some of them could resume their business before the approaching of Christmas and Chinese New Year, which were peak retail season of the year.

61. SFH remarked that enforcement actions would be taken in accordance with the existing legislation. In the long-run, the Administration would assist stall hawkers for continuous operation by adopting various improvement measures as set out in the Administration's paper, and communicate with them regarding the proposals to improve their business. However, they

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should first rectify the irregularities of their stalls to ensure the safety of the operating environment.

62. On the timing for the resumption of business of the affected hawkers, DFEH explained that a part of Fa Yuen Street was closed as the relevant Government departments were still undertaking safety inspections at the fire scene. FEHD was not in a position to decide on the timetable, but hoped that the closed area could be opened up shortly. As regards the rectification of fixed pitches not complying with FEHD's requirements, DFEH pointed out that FEHD had followed up the issue with Fa Yuen Street hawkers since the last fire in 2010, but the hawkers had repeatedly ignored FEHD's warnings and kept delaying the rectification work. To prevent recurrence of fire tragedies, the Administration would continue to take stringent law enforcement actions against any breach of licence conditions or safety requirements according to the situation on the ground.

63. Pointing out that the implementation of licence suspension/cancellation mechanism and demerit point system had caused much nuisance to the catering industry, the Chairman expressed great reservations about the Administration's proposed mechanism for cancellation of hawker licences. In order to preserve harmony in society, he requested the Administration to consider allowing stall hawkers to keep only the metal frames but removing the goods as suggested by Mr Vincent FANG, and taking improvement measures to enhance the safety of hawker stalls. On Ms Starry LEE's question as to whether financial support would be given to the affected stall hawkers, the Chairman took the view that the Administration should give due consideration in this regard.

## **VI. Any other business**

64. There being no other business, the meeting ended at 4:42 pm.