

# 立法會 *Legislative Council*

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## **Panel on Food Safety and Environmental Hygiene**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 5 February 2013**

### **Management of fixed hawker pitches**

#### **Purpose**

This paper summarizes the concerns of the members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the hawker policy as well as the Administration's proposed measures to improve the management of fixed pitch hawker areas subsequent to the Fa Yuen Street fire in November 2011.

#### **Background**

2. Street hawking has a long history in Hong Kong. While it provides job opportunities for the grassroots and offers a cheap source of goods for the public at large, it also causes environmental hygiene and noise problems as well as obstruction to public passageways. For many years, the Administration's policy has been to properly regulate the hawking activities of licensed hawkers and take enforcement action against illegal hawking. All along, the Administration has been monitoring and controlling the number of licensed hawkers. For example, no new hawker licences had been issued since the early 1970s until very recently; an ex-gratia payment scheme was introduced in 1983 and continued until 2007 to encourage the voluntary surrender of fixed pitch (cooked food or light refreshment) hawker licences (commonly known as "Dai Pai Tong" licence); and hawkers were resited into public markets to further reduce the number of on-street hawkers and improve environmental hygiene.

As a result of these measures, the number of licensed hawkers dropped from 20 000 in the late 1980s to some 7 000 in December 2011.

3. In recent years, there have been views that the hawking trade should be retained and revitalized in view of its traditional characteristics. The Administration reviewed the hawker licensing policy in 2008 and 2009. Subsequent to the reviews and after consultation with the Panel, District Councils (DCs), hawker associations and relevant stakeholders, the Administration decided to re-issue a limited number of hawker licences.

4. Two major fires broke out at the hawker stalls at Fa Yuen Street in December 2010 and November 2011 respectively and caused a considerable number of casualties in the adjoining buildings. As there are many similar on-street hawker stalls which are close to residential buildings and located in densely populated areas of the territory, the Administration considers it necessary to introduce new measures to improve the management of fixed hawker pitches so as to reduce the fire risks to nearby residents. Since November 2011, a basket of measures aiming at reducing the fire risks posed by fixed hawker pitches has been implemented by the Administration. The Food and Environmental Hygiene Department ("FEHD") has also strengthened enforcement against irregularities at Fa Yuen Street and other hawker areas throughout the territory. With a view to combating the violations of regulations by some stall hawkers despite repeated prosecutions, the Administration conducted a public consultation exercise from December 2011 to March 2012 on a proposed mechanism for cancellation of hawker licences.

5. Under the proposed licence cancellation mechanism, if a licensed hawker was convicted for six times within three months for breaching any hawker-related provisions under the Hawker Regulation (Cap. 132AI), the Director of Food and Environmental Hygiene ("DFEH") might consider cancelling the hawker licence. DFEH might also consider immediate cancellation of the hawker licence if the licensee had committed any serious offences including stall subletting, illegal connection of electricity and providing false information to obtain a hawker licence. If the licensee was dissatisfied with the cancellation of licence, he might apply for an appeal.

6. The proposed licence cancellation mechanism met with strong opposition from the Panel, most of DCs and hawker associations. Taking into

consideration the views collected, the Administration modified the original proposal of licence cancellation mechanism and put forward a new mechanism for suspension of hawker licences against repeated offenders in June 2012. Under the proposed licence suspension mechanism, if a licensed hawker was convicted for six times within three months for breaching any fire risk-related provisions under the Hawker Regulation, DFEH might consider suspending his hawker licence. If the licensed hawker was subsequently convicted again for six times within three months for breaching any related hawker regulations, the number of licence suspension days would increase to achieve a greater deterrent effect. DFEH might also consider immediate cancellation of the hawker licence if the licensee had committed any serious offences including stall subletting, illegal connection of electricity and making false declaration to obtain a hawker licence. An appeal mechanism was also provided for the licensee who was dissatisfied with the decision of DFEH.

Medium and long-term options to minimize the potential fire risks posed by hawker stalls at fixed pitch hawker areas

7. In the wake of the fire at Fa Yuen Street in November 2011, the then Chief Executive directed the then Chief Secretary for Administration to chair an inter-departmental working group to coordinate services available to the victims and families, as well as examine various medium and long-term options to improve the management of fixed pitch hawker areas. A three-month public consultation on the improvement measures on the management of fixed pitch hawker areas was launched from February to May 2012. The consultation document set out the following six medium and long-term options -

- (a) overnight storage of commodities only inside enclosed metal stall structures (without the need to dismantle the stall) ("留架不留貨");
- (b) dismantling of stalls and removal of all commodities after close of business at night ("朝行晚拆");
- (c) resiting of hawker areas;
- (d) resiting of hawker stalls in front of staircase discharge points of buildings;

- (e) installation of fixed fire resisting structures to enclose stalls on three sides and the top cum installation of sprinkler system; and
- (f) voluntary licence surrender scheme for fixed pitch hawkers.

### Better hawker stall design

8. During the public consultation exercise in February to May 2012, there were calls for an improvement in the stall design to facilitate the hawkers' compliance with the Government's requirements as well as to cater for the hawkers' business needs. To this end, the Administration has engaged the Hong Kong Polytechnic University ("PolyU") to study possible improvements on the design of the hawkers' stalls.

### **Deliberations of the Panel**

9. The Panel discussed the management of fixed hawker pitches at six meetings between 2010 and 2012, and received views of deputations at one of these meetings. A joint meeting with the Panel on Manpower was held on 28 June 2011 to discuss the creation of employment opportunity under the hawker policy. The deliberations and concerns of members are summarized below.

### Proposed sanction mechanism of hawker licences

10. While expressing strong objection to the proposed mechanism for cancellation of hawker licences, members were concerned that since the Government had stopped issuing new hawker licences, a hawker would not be able to obtain his hawker licence once it was cancelled. This would severely affect the livelihood of hawkers, especially the aged ones. Pointing out that many fixed pitch hawkers had proactively improved the fire safety of hawker areas after the fires at Fa Yuen Street, members considered it not necessary for the Administration to introduce the licence cancellation proposal.

11. The Panel passed a motion at its meeting on 11 April 2012 urging the Administration to withdraw its proposal on the mechanism for cancellation of hawker licences and formulate as early as possible a comprehensive and consummate hawker policy.

12. Members were subsequently advised that the Administration had refined its proposal by introducing a mechanism for suspension of hawker licences. While members were generally supportive of the proposed licence suspension mechanism, they also requested the Administration to conduct briefings for the hawkers on the implementation details of the mechanism before it came into effect.

13. The Administration advised that it would conduct a meeting to explain the implementation details to the hawker representatives and arrange briefing sessions for the licensed hawkers in each district before the licence suspension mechanism came into effect. Members were also advised that guidelines and written information on the mechanism would be issued prior to the introduction of the licence suspension mechanism.

Medium and long-term options to minimize the potential fire risks posed by hawker stalls

14. Members noted that among 4 500 on-street fixed hawker pitches, about 1 100 had adopted the Administration's proposed arrangement of "dismantling of stalls and removal of all commodities after close of business at night". Some members considered this measure neither viable nor applicable to certain hawker areas. In their view, no one-size-fits-all approach should be implemented across the board in all hawker areas. Pointing out that some hawker associations had adopted the arrangement of "removing the commodities without dismantling the stalls at night", members urged the Administration to improve communication with the hawking trade and consider site-specific measures for different fixed pitch hawker areas.

15. According to the Administration, its top priority was to ensure that the fixed hawker pitches would not become fire traps when they were left unattended at night. Given that each fixed pitch hawker area had its own operating environment and characteristics, the Administration would not apply the same mode of operation to all hawker stalls throughout the territory so long

as their operation did not pose any fire safety hazards. That said, stall hawkers were required to comply with the existing licensing conditions and not to store commodities outside the permitted stall areas overnight. The Administration assured members that it would consult the trade extensively with a view to enabling the sustainable development of the hawking trade.

16. Members noted that the Administration would set up a Steering Committee on Hawker Management chaired by DFEH to formulate and implement specific measures to improve management and reduce fire risks at each hawker area at the district level. For each major hawker area, a Hawker Management Consultative Committee ("HMCC") would be formed to serve as a communication platform for the representatives of licensed hawkers, relevant DCs and District Fire Safety Committee members. There was a view that as each hawker area has its own hawker association, the Administration should also include the representatives of these hawker associations in the membership of HMCC. The Administration advised that members of the representative trade associations would be appointed to sit on HMCCs.

17. On the proposed measure to resite the hawker stalls in front of staircase discharge points of buildings so as to eradicate the potential fire risks posed by hawker stalls to adjacent buildings, some members were concerned as to whether there would be sufficient space elsewhere to accommodate the relocated stalls. While noting that the Administration would identify suitable sites for the relocation of these hawker stalls, some members suggested that consideration should be given to rolling out the voluntary licence surrender scheme simultaneously to provide room for re-locating the concerned hawker stalls. There was also a suggestion of providing reasonable ex-gratia payments under the voluntary licence surrender scheme to the licensees in order to encourage them to surrender their hawker licenses and vacate the stall areas.

#### Stall size and design

18. Members considered the three-feet-times-four-feet stall too small for hawkers engaging in diversified trading. They urged the Administration to increase the stall area in order to improve the business environment of the hawker trade.

19. According to the Administration, given the large number of licensed hawker stalls in the territory, it was not possible for the Government to provide more space for each hawker stall. That said, if extra space could be made available with the introduction of the proposed voluntary licence surrender scheme, consideration could be given to re-demarcating and enlarging the area for each hawker stall.

20. Following the Fa Yuen Street fires, members called on the Administration to assist the affected hawkers in re-constructing the stalls with flame-retardant materials. Some members also called for a standardized design of stalls to improve the overall streetscape as well as providing financial and technical support to the affected hawkers for the construction of new hawker pitches. Noting that PolyU had been invited by the Administration to design a new hawker stall, some members considered that flexibility should be provided in the stall design. Members also requested the Administration and PolyU to consult the trade on the stall design.

21. According to the Administration, PolyU would take a pragmatic approach in working out the stall design so that hawkers could have a stall that was safe; more appealing in appearance; and functional in catering for the hawkers' business needs. Whether the stall hawkers would need to adopt the PolyU's new design would depend on their own circumstances. The Administration assured members that flexibility would be given in this regard, and PolyU would maintain communication with the hawking trade and come up with a stall design that would address the practical needs of hawkers.

22. Members were further advised that the provision of financial assistance to hawkers for the construction of hawker stalls would depend on the building cost of the new design as well as the affordability of the hawkers. Consideration might also be given to providing assistance in the installation work of some central facilities such as the sprinkler system if it was so required.

#### Enforcement actions

23. Pointing out that the criteria for enforcement varied among different FEHD staff and sometimes varied at different times of the day, members expressed concern about the standard of enforcement against non-compliant activities of hawkers. They also considered the Hawker Regulation outdated,

and that decisions on enforcement actions usually relied on the judgement of frontline officers. They urged the Administration to review the Hawker Regulation as well as the enforcement actions of FEHD staff.

24. According to the Administration, FEHD had regularly communicated with hawking trade associations and advised the hawkers during its daily inspections on its law enforcement criteria. The establishment of HMCC for each hawker area would also strengthen communication between FEHD staff and stall hawkers. In response to the concerns raised by members, the Administration issued a letter in early March 2012 to all licensees stating the enforcement priorities of FEHD and the requirements of a licensed hawker stall.

25. Members shared the deputations' view on the stringent restriction imposed on the activities of hawker assistants. They pointed out that there was a need for hawkers, in particular the elderly fixed pitch hawkers, to employ assistants to operate the stalls on their behalf.

26. The Administration explained that fixed pitch hawkers could employ assistants to help them operate the business. Registered assistants were allowed to operate the stall if the licensee was absent for a reasonable cause, such as during meal breaks. If the licensee was frequently absent or away for a prolonged period, or the assistants were frequently changed, this might give rise to a suspicion of stall subletting and which was a serious offence.

### Hawker policy

27. Members expressed disappointment at the Administration's failure to include in the public consultation exercise a proposal on the blueprint for the future development of the hawking trade. Members considered that the hawking trade was a street culture in Hong Kong, and hawker areas were places where the grassroots could make their living and consumers could get cheaper merchandises. They urged the Administration to map out a long-term hawker policy to facilitate the development of the hawking trade.

28. The Administration advised that to develop and encourage the hawking trade, apart from setting the hawker licence fee at a low level, the Administration had re-issued Itinerant (Frozen Confectionary) Hawker Licences and new bootblack licences in recent years to retain hawking with special and



traditional characteristics. As regards the future development of the 43 hawker areas and other sites, the Administration's primary concern was the fire safety of hawker stalls, and hence would pay particular attention to those hawker areas which posed a higher fire risk. The Administration would study the issues of increasing the number of hawker licences and the size of stall area in the medium to long term, subject to the space available, residents' support and public safety.

29. Members generally considered that the establishment of open-air bazaars could boost the development of economic activities and create employment opportunities in the local communities. They called on the Administration to regularize the existing open-air bazaars, such as the bazaar in Tin Shui Wai, and set up an inter-departmental task force to formulate a comprehensive and long-term hawker policy.

30. According to the Administration, it kept an open mind on the idea of establishing open-air bazaars at suitable sites in various districts. In view of the potential environmental hygiene problems and other nuisance caused by street hawking, the Administration considered that proposals for open bazaars should originate from the local communities, with general support from local residents and the relevant DCs. If there were suitable sites with local support and meeting the requirements on food safety and environmental hygiene, the relevant policy bureaux and departments, including the Food and Health Bureau, FEHD and the Home Affairs Department would provide assistance to proponents of open-air bazaars.

### **Recent development**

31. At the special meeting of the Panel on 21 January 2013 to receive a briefing from the Secretary for Food and Health on the 2013 Policy Address in relation to food safety and environmental hygiene matters, members were advised, among others, that the Administration would launch a five-year assistance scheme to improve and enhance the appearance, design and fire resistance capability of hawker stalls, as well as to help improve the functionality of hawker stalls and the operating environment of hawker areas. Under the scheme, a one-off grant/ex-gratia payment would be granted to hawkers who reconstruct their stalls at the same location, relocate their stalls to

other pitch spaces or choose to surrender their hawker licences. The Administration would earmark a sum of \$200 million for the scheme which would cover about 4 300 on-street hawkers in the 43 fixed-pitch hawker areas. The Administration would consult the Panel on the details of the scheme and seek funding approval from the Finance Committee, with a view to launching the scheme in the summer of 2013.

### **Relevant papers**

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

Council Business Division 2  
Legislative Council Secretariat  
1 February 2013

**Relevant papers on the management of fixed hawker pitches**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Food Safety and Environmental Hygiene	14.12.2010 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Food Safety and Environmental Hygiene	28.6.2011 (Item II)	<a href="#">Agenda</a> <a href="#">Minutes</a> <a href="#">CB(2)2434/10-11(01)</a> <a href="#">CB(2)2434/10-11(02)</a>
Panel on Food Safety and Environmental Hygiene	13.12.2011 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Food Safety and Environmental Hygiene	14.2.2012 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Panel on Food Safety and Environmental Hygiene	11.4.2012 (Item I)	<a href="#">Agenda</a> <a href="#">Minutes</a> <a href="#">CB(2)1999/11-12(01)</a>
Panel on Food Safety and Environmental Hygiene	12.6.2012 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	14.11.2012	<a href="#">Official Record of Proceedings (Question 18)</a>