

立法會
Legislative Council

LC Paper No. CB(2)1374/12-13(02)

Ref : CB2/PL/FE

Panel on Food Safety and Environmental Hygiene

**Background brief prepared by the Legislative Council Secretariat
for the special meeting on 21 June 2013**

Hawker policy

Purpose

This paper summarizes the concerns of the members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the hawker policy.

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. According to the Administration, its policy in relation to street hawking is to properly regulate the hawking activities of licensed hawkers and take enforcement action against illegal hawking. Since the early 1970s, the former Urban Council had stopped issuing new hawker licences under normal circumstances. Succession to and transfer of hawker licences already issued were subject to stringent restrictions, the purpose of which was to gradually reduce the number of hawkers by natural attrition.

Voluntary surrender scheme for hawker licences in 2002

3. In 2002, taking into consideration that "Dai Pai Tong" and itinerant hawkers were more likely to cause environmental hygiene problems, noise nuisance as well as obstruction to public passageways, a five-year voluntary

surrender scheme was introduced to encourage "Dai Pai Tong" licensees and itinerant hawkers to surrender their licences voluntarily in exchange for a one-off ex-gratia payment ("EGP"), rental of a vacant stall in public markets/cooked food centres under concessionary terms, or becoming a fixed-pitch (non-cooked food) hawker. The voluntary surrender scheme applicable to "Dai Pai Tongs" ended on 30 November 2007 with a total of 37 "Dai Pai Tong" hawker licences voluntarily surrendered. The voluntary surrender scheme applicable to itinerant hawkers had been extended thrice by the Administration to 31 December 2010 having regard to the possible implications brought by the Administration's review exercise on hawker licensing policy. In view of the Panel's concern about the livelihood of elderly holders of itinerant hawker licences ("IHLs"), the Administration decided in November 2010 to extend for the last time the options of EGP and priority selection of a vacant fixed-pitch under the voluntary surrender scheme for IHLs by two years until 31 December 2012, while the option of selecting a vacant public market stall expired as scheduled on 31 December 2010.

Review of hawker licensing policy in 2008

4. The Administration reviewed the hawker licensing policy in 2008 in response to the views that the hawking trade should be retained and revitalized because of its traditional characteristics. Subsequent to the review 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 subject to conditions.

Proposals to cancel or suspend hawker licences in 2011 and 2012

5. Two major fires broke out at the hawker stalls at Fa Yuen Street in December 2010 and November 2011 respectively and the second fire had resulted in a number of casualties. Following the fire in November 2011, a basket of measures has been implemented by the Administration to improve the management of fixed hawker pitches so as to reduce the fire risks posed to nearby residents. 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.

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 licence suspension mechanism, if a licensed hawker is convicted for six times within three months for breaching any fire risk-related provisions under the Hawker Regulation (Cap. 132AI), the Director of Food and Environmental Hygiene ("DFEH") might consider suspending his hawker licence. If the licensed hawker is 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 has committed any serious offences including stall subletting, illegal connection of electricity and making false declaration to obtain a hawker licence. An appeal mechanism is also provided for the licensee who is dissatisfied with the decision of DFEH. The licence suspension mechanism has commenced operation since November 2012.

Assistance scheme for hawkers in fixed-pitch hawker areas

7. To reduce fire risk posed by on-street hawking activities in the hawker areas, the Administration announced on 3 September 2012 a plan to launch a five-year assistance scheme for licensed hawkers operating in 43 fixed-pitch hawker areas ("the Assistance Scheme"). The Assistance Scheme aims to provide financial assistance to hawkers in the hawker areas to improve the fire resisting capability and design of hawker stalls, and to relocate stalls away from staircase discharge points of buildings or emergency vehicular access. A one-off EGP is also offered under the Assistance Scheme for voluntary surrender of hawker licences ("the voluntary licence surrender arrangement"), so as to help expedite the release of vacant pitches and hence facilitate the relocation of stalls which pose higher fire risks.

Deliberations of the Panel

8. The Panel discussed the issues relating to the hawker policy at a number of meetings between 2008 and 2013, and received views of deputations at five 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.

Hawker policy

9. Members expressed disappointment at the Administration's failure to provide a blueprint for the future development of the hawking trade. In their view, 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. Members urged the Administration to map out a long-term hawker policy to facilitate the development of the hawking trade. There was also a suggestion that a hawker development fund should be set up to provide assistance to hawkers and develop the hawking trade.

10. 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 IHLs (Frozen Confectionary) 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 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.

11. 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.

12. 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-air 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.

Reissuing of hawker licences

13. Members were advised that registered assistants and members of the public would have an equal opportunity to apply for vacant fixed hawker pitches, and the priority of pitch selection would be decided by ballots. In the Administration's view, this would ensure that the vacant pitches would be allocated in a fair and open manner. Members did not subscribe to the Administration's view. They considered that fixed-pitch hawker licences should be allowed to be transferred to or succeeded by registered assistants; and the succession and transfer of IHLs should be in line with that of the fixed-pitch hawker licences. The Panel passed a motion at its meeting on 12 January 2010 urging the Administration to give priority for balloting of vacant on-street fixed hawker pitches to registered assistants. Members were subsequently advised that the Administration would give priority to existing registered assistants with experience in the hawking trade to apply for 70% of the vacant fixed hawker pitches.

14. Some members suggested that consideration be given to issuing new fixed-pitch (cooked food or light refreshment) hawker licences for vacant pitches previously used to operate "Dai Pai Tongs" and according priority for such licences to former licensees or operators of "Dai Pai Tongs". The Administration advised that it would be willing to consider proposals on reviving formerly "Dai Pai Tong" sites from DCs. However, the Administration considered it unfair to accord priority to former licensees or operators of "Dai Pai Tongs", especially if they had surrendered their licences under the voluntary surrender scheme for EGP.

15. Noting the Administration's proposal to additionally issue 30 new IHLs (frozen confectionery), some members urged the Administration to further increase the number of licences having regard to the difficulty of low-skilled persons to secure employment in the poor economic climate. There was also a suggestion that more new IHLs (mobile van) (or commonly known as "ice-cream vans") should be issued. Taking into account members' view and with DC's support, the Administration subsequently issued 60 new licences as at December 2011. However, members were advised that the Administration had no plan to issue additional new IHLs (mobile van). In the Administration's

view, ice-cream vans would probably park at areas with heavy pedestrian and vehicular traffic, and their running engines during operation would bring adverse impact on the air quality.

Enforcement actions

16. Some members were concerned about the operational difficulties faced by itinerant hawkers. In particular, FEHD had frequently changed the locations of hawker black spots without notice. These members considered that the number of hawker black spots should be reduced and FEHD should be more lenient in taking enforcement actions against hawkers, having regard to the poor economic climate. The Administration advised that certain locations were regarded as not suitable for hawking activities and no prior warning would be given before taking enforcement actions. Nevertheless, to enhance transparency, the Administration had provided a list of such locations to DCs and made the information available at FEHD offices and website since April 2007. Hawker associations were also provided with the list.

17. 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. Considering the Hawker Regulation outdated, members were worried 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.

18. According to the Administration, FEHD had regularly communicated with the trade associations and advised the hawkers during its daily inspections on its law enforcement criteria. The establishment of Hawker Management Consultative Committee 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.

19. Members shared the deputations' view that there was a need for hawkers, in particular the elderly fixed-pitch hawkers, to employ assistants to operate the stalls on their behalf. 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 which was a serious offence.

The Assistance Scheme

20. While some members expressed support for the Assistance Scheme to provide financial assistance to hawkers in the 43 hawker areas for stall reconstruction and relocation, some other members were sceptical about the real motive for introducing the Assistance Scheme. In their view, the Assistance Scheme was not entirely for enhancing fire safety, but to reduce the number of hawkers and "phase out" the hawking trade.

21. The Administration stressed that it did not have any policy to "phase out" the hawking trade, or reduce the number of hawkers. The aim of the voluntary licence surrender arrangement was to help expedite the release of vacant stall for the relocation of stalls with higher fire risks.

22. Some members were of the view that the voluntary licence surrender arrangement should be made available to all hawkers in addition to the licensed hawkers operating in the 43 fixed-pitch hawker areas. Some other members asked the Administration to consider raising the amount of EGP from \$120,000 to \$200,000 on the grounds that the hawkers would permanently lose their means of livelihood after surrendering their hawker licences to the Government.

23. According to the Administration, the aim of the voluntary licence surrender arrangement was to facilitate the vacation of space for the relocation of hawker stalls with higher fire risks. Since the hawker stalls in the hawker markets or the itinerant hawkers did not pose the same fire risks as those fixed-pitched hawker stalls, they were not the priority candidates to be covered under the voluntary licence surrender arrangement. As regards the 141 hawkers who had only recently chosen to enter the hawking trade and were issued with the hawker licences in 2010 or 2011, the Administration considered that there was no strong case for allowing them to surrender their licences in order to apply for EGP. The Administration further advised that it had consulted the trade on the level of EGP. As the current licence surrender arrangement was voluntary in nature, a hawker was free to choose whether or not to surrender his licence in exchange for the one-off EGP.

Recent development

24. At the meeting on 15 March 2013, the Finance Committee approved a commitment of \$230 million for launching the five-year Assistance Scheme for the licensed hawkers operating in the 43 hawker areas. According to the Administration, the Assistance Scheme will be launched in the summer of 2013. FEHD has already commenced local consultation on the specific resiting proposals for each hawker area and arranged briefing sessions on the details of the Assistance Scheme for the relevant DCs. FEHD will also issue letters to all licensed hawkers in the 43 hawker areas to inform them of the details of the Assistance Scheme and invite applications.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
17 June 2013

Relevant papers on hawker policy

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	1.12.2008*	CB(2)375/08-09(01)
Panel on Food Safety and Environmental Hygiene	10.2.2009 (Item IV)	Agenda Minutes CB(2)1044/08-09(01) CB(2)1044/08-09(02) CB(2)1044/08-09(03)
Panel on Food Safety and Environmental Hygiene	10.3.2009 (Item VI)	Agenda Minutes CB(2)1044/08-09(01) CB(2)1044/08-09(02) CB(2)1044/08-09(03)
Panel on Food Safety and Environmental Hygiene	14.4.2009 (Item VII)	Agenda Minutes CB(2)686/10-11(01)
Panel on Food Safety and Environmental Hygiene	14.7.2009 (Item II)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	12.1.2010 (Item V)	Agenda Minutes CB(2)622/09-10(01)
Panel on Food Safety and Environmental Hygiene	9.11.2010 (Item VI)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	14.12.2010 (Item VI)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	28.6.2011 (Item II)	Agenda Minutes CB(2)2434/10-11(01) CB(2)2434/10-11(02)

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	13.12.2011 (Item V)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	14.2.2012 (Item IV)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	11.4.2012 (Item I)	Agenda Minutes CB(2)1999/11-12(01)
Panel on Food Safety and Environmental Hygiene	12.6.2012 (Item V)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	5.2.2013 (Item III)	Agenda
Legislative Council	20.3.2013	Official Record of Proceedings (Question 20)

* issue date

Council Business Division 2
Legislative Council Secretariat
17 June 2013