

Subcommittee on Issues Relating to Bazaars

Follow-up actions arising from the meeting on 21 January 2017

The Administration is requested to provide information on:

Hawker-related issues

- (a) the detailed procedure for registering the unlicensed operators in the Yen Chow Street Temporary Hawker Bazaar ("cloth bazaar"), including –
 - (i) how the six on-site surveys carried out during the period between December 2013 and January 2014 were conducted;
 - (ii) the reasons for excluding 17 persons who have been operating in the cloth bazaar from the list of registered unlicensed operators; and
 - (iii) whether the Administration would re-consider the claims of these persons

Re: item (i). During the period between December 2013 and January 2014, the Food and Environmental Hygiene Department ("FEHD") conducted six on-site surveys in the cloth bazaar. Any persons confirmed to be operating at the cloth bazaar during any one of the on-site surveys were counted in. As a result, a total of 33 unlicensed operators were confirmed to be eligible for registration. Since early 2014, FEHD has resumed meeting with the cloth hawkers to follow up the relocation arrangement. In February 2016, another 17 persons approached FEHD claiming that they were operators in the cloth bazaar, but they were not on the list of registered unlicensed operators.

Re: item (ii). It is the Government's responsibility to ensure the proper use of public fund and resources. At present, there are 17 persons who claim that they have been operating in the cloth bazaar but are not on the list of registered licensed operators ("claimants"). FEHD met with them on 16 March 2016 and 20 April 2016, and requested them to provide information and documents to prove their operation in the cloth bazaar for further verification by FEHD. After meetings and careful verification of the relevant information (including interviews with individual claimants to seek clarification on and verify the information provided, as well as purchase invoices certified by the shops concerned), FEHD, in the absence of sufficient supporting evidence, is unable to accept those 17 persons' claims regarding their bona fide long-period independent operation at the cloth bazaar. Under such circumstances, the special arrangement for eligible unlicensed cloth hawkers does not apply to those 17 persons. Letters were sent on 28 and 29 September 2016 to notify the

persons concerned individually about the reasons for not accepting their claims. Upon notification of the verification results, some of the persons concerned claimed that they had additional information to prove their bona fide long-period independent operation at the cloth bazaar. As such, FEHD contacted the persons concerned, inviting them to provide additional information on or before 11 October 2016. Among the claimants, 16 of them then submitted supplementary documents. After careful verification of the supplementary information provided by the claimants, FEHD is still not satisfied with the validity of their claims in the absence of sufficient supporting evidence. The results of the two rounds of verification work are summarised as follows:

- All claimants failed to provide records of tax returns or income and expenditure as evidence of their operation at the cloth bazaar.
- Some claimants admitted that they were only assisting their family members (including former or existing licensees or registered unlicensed operators), other licensees or registered unlicensed operators to operate at the cloth bazaar. They themselves are not bona fide independent operators at the bazaar.
- All stalls claimed to be occupied by the claimants overlap with those claimed by the licensees / registered unlicensed operators. As a result, it is unable to prove that the claimants operate independently at the cloth bazaar.
- Some claimants admitted that they were operating with other people in partnership. As their partners have been offered an exit plan by FEHD, such claimants will not be offered the same separately.
- Some claimants provided FEHD with shops' invoices. However, most of these invoices contain incomplete information and have not been verified by the shops concerned. The invoices cannot serve as evidence to confirm the operation of business.
- Individual claimants provided FEHD with electricity or telephone bills. In the absence of other credible evidence (i.e. failure to provide business registration certificates, records of tax returns and operation, invoices issued by the claimants, etc.), electricity and telephone bills can only prove that the claimants concerned are registered customers of the electricity supply company or telecommunication company concerned using the address of the cloth bazaar for registration. Moreover, there is discrepancy between the service addresses on the electricity bills and the addresses of the stalls where the operation is claimed to take place. As a result, it is unable to prove that the claimants concerned have been operating in person in the cloth bazaar.

- One claimant who was born in 1994 provided invoices issued in 1996. One can hardly believe that the claimant started operating the stall in the cloth bazaar at the age of two.
- One claimant provided a business registration certificate, but the date of registration (December 2015) is later than the date when the Government first contacted the eligible unlicensed cloth hawkers (August 2015).
- Some claimants provided supplementary information such as shops' invoices to FEHD. Most of these invoices contain incomplete information and have not been verified by the shops concerned. Some of the materials provided, such as newspaper clippings, photos, medical certificates, etc. are simply irrelevant to the claimants' claim that they have operated on their own for a long period. In the absence of other credible evidence (i.e., failure to provide business registration certificates, records of tax returns and operation, invoices issued by claimants, etc.), they cannot prove themselves as bona fide independent operators.

Re: item (iii). FEHD will not re-consider the claims of these claimants as sufficient time, i.e. nearly one year, was given for them to provide information and documents to prove their operation in the cloth bazaar.

- (b) the Administration's considerations, plans and timetable for issuing new hawker licences
- (c) the Administration's measures to facilitate holders of "permit of registered assistant" to apply for (including to apply for the transfer of/succession to) hawker licences with a view to solving the "succession problem"

Under the Hawker Assistance Scheme, when hawkers surrender the licences and vacate the respective pitches, they will be granted an ex-gratia payment (EGP). Vacated pitches were used for relocating hawker stalls in front of staircase discharge points of buildings or obstructing the operation of emergency vehicles. In the process, the Department would also rationalise the layout of pitches in the hawker areas, bringing about a face-lift to the operating environment. At present, we are monitoring closely the reconstruction of hawker stalls and the realignment of hawker pitches in parallel, and will consider the optimal time for conducting a review on whether or not to issue new on-street fixed-pitch hawker licences to fill vacant pitches available. During the review, we will take into account the circumstances of individual hawker areas, including their fire safety and environmental hygiene situations, the business environment, comments of relevant departments, as well as the views of the relevant District Councils and

local residents. We will consider whether and how to handle the case of registered assistants in the context of the review.

Applications for setting up bazaars and their operation

- (d) the roles of various departments under the existing policy on bazaars with details on the "established mechanism" adopted by departments in handling bazaar proposals

Please see the other paper on “the definition of bazaar and related issues” for the roles of departments.

- (e) the Administration's response to Subcommittee members' suggestion of establishing a one-stop platform (with representatives from all relevant departments)/designated department/task force to facilitate the public in making applications for setting up bazaars

The Government takes the view that the actual mooted proposal may vary in the light of the specific situation in each district. To have a communication platform prescribed and established by the Government may run counter to the bottom-up approach. At present, the departments have established mechanisms to handle applications for using their respective venues (including for bazaar proposals).

- (f) the Administration's response to deputations' request for the Government to initiate bazaars for participation by interested parties (i.e. similar to the arrangement of organizing Lunar New Year Fairs in various districts)

The development of bazaars must be bottom up, and able to meet the needs of the districts concerned. It is observed that the nature and positioning of bazaars can be distinctly different. They may aim at festival celebrative events, promoting cultural creativity, creating opportunities for grass-roots to start their own businesses, or boosting community economy and tourism. Bazaars can also take various forms, such as carnivals, farm fests, arts and craft bazaars etc. In view of this, we should allow more room and flexibility for the development of different types of bazaars.

The Government considers that this issue should be handled through specific bottom-up proposals for organising bazaars. The proponents should identify suitable locations to develop bazaars as appropriate, taking account of the circumstances, development, culture and planning of the district concerned.

Provided that public order and safety, food safety and environmental hygiene are not compromised, and that public passageways are not obstructed, when suitable sites can be identified by the organisations concerned and support from local communities and respective district councils have been obtained, the Government will facilitate liaison with relevant bureaux/departments regarding the use of the sites. The relevant departments will offer advice and handle the bazaar proposals in accordance with the established mechanisms.

- (g) the Government's policies and measures for monitoring and controlling noise nuisance caused by street performers and bazaar operators (e.g. street performers in Mong Kok Pedestrian Precinct ("MKPP")), including the noise control requirements that performers and operators have to comply with

Street performers and bazaar operators are required to abide by the law in the same way as the public at large. For activities conducted in public places, they are not permitted to cause noise nuisance, nuisance, annoyance or obstruction to people and/or traffic as well as make objectionable performances of an indecent, obscene or offensive nature. Relevant legislative provisions are set out in various Ordinances¹. In respect of noise, reference can be made to the Noise Control Ordinance (Cap. 400).

Upon receiving a public complaint, depending on the nature of the complaint, the relevant department(s) (e.g. FEHD, the Police and the Environmental Protection Department) will conduct investigation. If the street performance in question breaches any statutory provisions, the relevant department(s) will take enforcement action(s). Certain departments also launch educational and publicity activities in this regard in collaboration with the stakeholders.

It must be pointed out that pedestrian precincts and bazaars are distinctly different terms and it will be confusing if the two concepts are mixed up.

¹ At present, there is no specific mechanism under statute to regulate street performance or street performers. However, if a certain performance activity falls within public entertainment (e.g. musical entertainment, dramatic entertainment or dance party to which the general public is admitted) as defined under the Places of Public Entertainment Ordinance (Cap. 172), a person keeping or using a place of public entertainment is required to obtain a licence issued by the licensing authority.

- (h) whether the use of liquefied petroleum gas cartridges (0.55 litre) for heating food would be allowed in bazaars (i.e. not regarded as using "naked flame")

Bazaars attract flocks of people. There are a rich variety of food and diversity of cooking methods. It might involve the use of boiling oil or boiling soup. We must therefore recognise the potential safety hazards associated with reheating food using naked flame in bazaars.

At present, in view of public safety concerns for stall operators, customers and the public, the licensing authority will consult the relevant departments under the licensing regime. The departments concerned will conduct assessment of the event and issue requirements to the licensees for compliance in order to mitigate the potential risk. The Government still encourages the use of electricity for reheating food for sale in cooked food bazaars, just like any other events held under temporary food factory licences. Cooked food stalls can be found in bazaars, as well as Lunar New Year Fairs and the Hong Kong Brands and Products Expos, but the operators are required to obtain temporary food factory licences from FEHD, and they are only allowed to reheat food items with electricity for sale.

Reheating food with naked flame not only poses safety hazards but also causes emission of oily fume and cooking odour. The departments concerned must take a careful look at public safety and bear in mind the acceptability of such practices to the public and affected residents. Subject to the pre-requisites that public safety is not jeopardised and public acceptance is obtained, the Government remains open-minded towards whether it is possible in future to allow reheating food with naked flame in bazaars. It requires careful examination in a holistic manner by taking a basket of factors into account, in order to determine whether it is appropriate against the circumstances concerned.

- (i) the Administration's response to the 142 sites for setting up bazaars identified by "Supporting Grassroots' Bazaar", and the relevant government departments responsible for vetting applications for the use of these sites

Please see the other paper on “the definition of bazaar and related issues” for the roles of departments.

- (j) the Administration's response to deputations' request for the Government to consider identifying a list of suitable sites over the territory that are supported by relevant District Councils for setting up bazaars

Please see the other paper on “the definition of bazaar and related issues” for the roles of departments.

- (k) the reason for not setting up bazaar again at the rooftop of Wing Fong Street Market in Kwai Chung despite the fact that the bazaar held at that location had been successful and welcomed by the public and local residents

In dealing with the non-designated application for use of the leisure venues, LCSD would vet the application case by case in order to assess carefully various factors including the aims of the event, the benefits that would bring to the public, the duration of the activity, the area to be used, any adverse impact to be caused to the users of facilities for designated purposes and the nearby residents, as well as the past performance record of the organizations concerned in hiring the facilities.

LCSD approved an application from an organisation to hold a bazaar activity (葵涌墟) at the Wing Fong Street Market Roof Top Children's Playground on 2 October 2016 from 11:00 am to 9:00 pm.

After the last bazaar held on 2 October 2016 organized by the organisation, LCSD received complaints from both the users of the facilities and the renters of the market stalls in the market building. In view of the local feedback, the department needed time to discuss with the organisation to resolve the local concerns and complaints and reviewed the overall arrangements for the future activity if it wanted to use the venue again. Given a consensus has yet to be reached, formal approval to its brief request to use the same venue again in January 2017 could not be granted. Nevertheless, LCSD would maintain continual contact with the organisation with a view to getting better arrangements.

- (l) the Administration's response to the views raised by deputations/individuals at the meeting and in their submissions

The Government adopts a positive attitude towards specific bottom-up proposals for organising bazaars. As long as they will not compromise public order and safety, food safety and environmental hygiene and obstruct public passageways, when suitable sites have been identified by the proponents concerned and support from local communities and respective district councils have been

obtained, the Government will facilitate liaison with relevant bureaux/departments regarding the use of the sites.