

**For discussion
on 11 July 2017**

**Legislative Council
Panel on Food and Environmental Hygiene**

Enforcement Strategy Relating to Hawker Control

Purpose

This paper informs Members of the enforcement strategy relating to hawker management of the Food and Environmental Hygiene Department (“FEHD”) as well as the challenges to hawker management and enforcement work.

Background

2. Street hawking has a long history in Hong Kong. In 2016, there were about 5 900 licensed hawkers and around 1 450 unlicensed hawkers over the territory. In each of the past three years, FEHD received on average some 13 500 complaints involving illegal hawking and obstruction in public places. Complainants were mainly dissatisfied with street obstruction, noise and environmental hygiene problems caused by illegal hawking and demanded enforcement actions by the authorities concerned. On the other hand, there are also opinions in the community that illegal hawking activities, in particular those involving aged and disabled hawkers, should be handled with discretion. As opinions vary with people on the hawker issue, FEHD, tasked with taking the enforcement actions, is from time to time faced with such a quandary.

Hawker Management Policy

3. Under the current hawker management policy, the Government endeavours to strike a proper balance between allowing legal hawking activities on the one hand and maintaining environmental hygiene, safeguarding food safety, ensuring public safety and protecting the public from nuisance on the other.

Hawker Management Strategy

4. FEHD has a duty to keep main thoroughfares, areas of high pedestrian flow and the vicinity of markets/hawker bazaars free of illegal hawkers as far as possible. Since late 2001, FEHD has adopted the strategy of carrying out immediate arrest and seizure of commodities and paraphernalia without prior warning under the following scenarios –

- (a) sale of prohibited/restricted or cooked food; and
- (b) hawking in major thoroughfares, areas of high pedestrian flow (such as pedestrian precincts, Mass Transit Railway entrances/exits, bus terminals and ferry concourses, heavily used footbridges, overseas workers rendezvous and tourist spots) and places under substantiated and repeated complaints of hawking activities.

5. When dealing with illegal hawking activities that do not fall within the scope mentioned in paragraphs 4(a) and (b) above, FEHD's frontline staff would, generally speaking, verbally warn the hawkers first and ask them to disperse. If the verbal warning is unheeded, prosecution action would follow. The objective of hawker management operations could normally be met by adopting the "disperse or else we would arrest" tactic. Such a tactic calls for vigilance, flexibility and irregular patrolling to keep the hawkers from taking root. If the unlicensed hawkers persist in trading and do not disperse, prosecution will be taken. Whether they are liable on conviction to a fine or not is subject to the court's discretion. FEHD's guidelines clearly state that hawker management is not assessed on the basis of the number of prosecutions.

6. In cases where aged or disabled hawkers are involved, members of the Hawker Control Teams (HCTs) will exercise their power in a reasonable manner having regard to the circumstances on the ground. HCT staff will generally ask them to disperse and, if they refuse to comply, give verbal warning. Prosecution will be initiated if the verbal warning is not heeded.

Challenges to Hawker Management and Enforcement Work

7. Hawking is an issue of complex nature. On the one hand, hawking activities often cause various environmental nuisances and obstruction in public places. There have been demands from local residents for stringent enforcement actions against such activities. On the other hand, there exists a general sentiment in the community recognising on-street hawking not only as a

form of economic activity that provides a convenient means for the grassroot to earn a living, but also as part of Hong Kong's way of life.

8. The day-to-day challenges to FEHD's hawker management work are multi-fold. Some unlicensed itinerant hawkers are highly mobile and often employ the "hit-and-run" tactic. When asked to disperse, they would do so. However, as and when HCT staff have left the scene to patrol other locations, they would take the opportunity to double back to the major hawker black spots or locations with heavy pedestrian flow.

9. When taking enforcement actions against illegal street hawking activities, FEHD staff are expected to exercise both reasonableness and sensitivity. This is the biggest challenge.

10. From the legal perspective, FEHD staff are empowered to execute the Public Health and Municipal Services Ordinance (Cap.132) (the Ordinance) and its subsidiary regulations, including the Hawker Regulation (Cap. 132AI). Section 83(B)(1) of the Ordinance specifies that no person shall hawk in any street except in accordance with a licence issued under regulations made under section 83A. It is the duty of FEHD staff to take enforcement actions against offences. The laws should be enforced on a non-discriminatory basis. Under the existing legislation, no particular person is granted immunity from prosecution. Frontline staff are required to take appropriate actions in accordance with the guidelines having regard to the actual circumstances. When exercising discretion, they should be mindful of causing possible misunderstandings about selective or unfair enforcement, or even suspected act of harbouring.

11. Under normal circumstances, when dealing with illegal street hawking activities, FEHD staff will gather evidence on site and take appropriate enforcement actions on the basis of facts, circumstantial factors and operational guidelines. Tactics such as dispersals and warnings will be employed for the purpose of hawker management¹. Frontline staff will exercise discretion understandingly and reasonably when handling illegal hawking involving aged or disabled persons. However, if all the dispersals and warnings cannot work out and if the person in question ignores repeated warnings and persistently commits the offence, prosecution will be necessary and will be in the public interest. Otherwise, it may give a misleading impression/message to the community that the interests of some people override the right of the public to use the streets. Only giving advice to but not initiating prosecution against

¹ For illegal hawking activities which take place in main thoroughfares or areas of high pedestrian flow, or which involve the sale of prohibited/restricted or cooked food, prosecution will be taken by FEHD staff without prior warning.

certain persons who are not amenable to repeated advice may attract criticisms such as poor enforcement, failure to achieve effect and lack of deterrent. Also, environmental hygiene and obstruction problems may get worse as a result and the places concerned would become hygiene blackspots in time. Would that be fair to those members of the public who are subject to nuisance? Would members of the public also agree that in executing the Ordinance, the Government may take out unfair enforcement and grant immunity to certain persons who are not amenable to repeated advice from prosecution? And would that fall short of their reasonable expectation for the work of enforcement departments?

Follow-up Measures

12. Against the aforesaid background and the challenges to hawker management and enforcement work, FEHD will conduct review to improve the existing operational guidelines, including studying whether and how the criteria for defining unheeded repeated warnings, evidence collection, prosecution priority etc. can be clarified, hence rendering the operational guidelines more specific and clear, and enabling frontline staff to carry out their duties with both reasonableness and sensitivity as far as possible. We will remind our frontline staff from time to time and provide them with sufficient training in a bid to achieve consistency in enforcement.

Advice Sought

13. Members are invited to note and comment on the contents of this paper.

Food and Health Bureau
Food and Environmental Hygiene Department
July 2017