

The Professional Commons
Submission on Consultation on
Mechanism for Cancellation of Hawker Licenses

1. Two weeks after the Fa Yuen Street fire incident, the Government proposed the introduction of “Mechanism for Cancellation of Hawker Licenses” in a bid to address the “safety problems” caused by fixed pitch hawker areas through strengthening the deterrent effect of law enforcement. It is simply not fair for the Administration to take advantage of the fire incident, then to pass the buck to hawkers. The Professional Commons (“The ProCommons”) opposes the policy goal of the proposed mechanism that simply cancels their licenses and removes them off the street.
2. Furthermore, it should be stressed that the proposal only focuses on the control and regulation perspective instead of a comprehensive policy review of hawker issues. Furthermore, the Government fails to address hawkers’ difficulties that make them fall into pitfalls of existing regulation easily, as far as their daily practice is concerned. In the light of this, we oppose the proposed mechanism that leads to revocation of hawker licenses.

The proposal: not justified

3. The consultation paper has put forward two arguments to support the proposed policy. However, both of them are regrettably unconvincing. Detailed analysis are as follows:
 - a. The main argument that the Government has put forward is that stall hawkers “persist in blatantly violating regulations despite repeated prosecutions”, given that 7,000 convicted cases in relation to licensed hawkers or assistants had been recorded, of which 28% were charged 4 times or more. However, this inference is simply not tenable, as what is represented by the prosecution figure can be the result of more frequent inspections instead of the “blatant violation of law intentionally” by stall hawkers. According to the statistics of Food and Environmental Hygiene Department, the number of convicted cases related to licensed hawker had increased from 2724 cases in 2004 by 2.5 times to 6704 cases in 2011.

- b. It is argued by the Government that "the business nature of hawkers is similar to that of market stalls", therefore suggesting that the policy of tenancy termination mechanism of market stalls can serve as reference for what it can do to stall hawkers in the streets. However, that is not the case. The reasons are as follows:
- Market stall operators enjoy preferential treatments but not the stall hawkers: the existing hawker policy focuses primarily on control and management of hawkers in the name of reducing public nuisance. Therefore, we do not rule out the possibility that the Government is leveraging to further restrict hawker activities by revocation of their licenses at the cost of even reducing their numbers. On the other hand, the function of the public market has long been acknowledged by the Government with even supportive measures in place. These can be seen from the improvement measures introduced by the Government in response to the comment of the Audit Commission Report, including attempted alleviation of vacancy rate by introducing businesses from service sectors. It is obvious that a relatively relaxing regulation has been enjoyed by market stalls, whereas stall hawkers are under constant suppression.
 - The consultation paper (including annex 1) provided no further detail of the acts that may cause the termination of tenancy in public market. Hence, it would be difficult to fairly assess law enforcement activities on market stalls, not to say providing useful reference for comparison.

Endangering the livelihood of hawkers

4. A hawker license is what we consider a business license for the hawker, as far as its nature is concerned. Hawkers are in general less educated lower-skilled labour, thus depriving them of their hawker license means also a deprivation of their only livelihood. Against this background, there should be careful policy discussion before introduction of the proposed measures. The amendment on penalties under the Driving-Offence Point System for commercial vehicle drivers was endorsed after serious and prolonged deliberation, which should be considered as a useful reference.
5. Moreover, the consultation paper fails to mention the impact of proposed

measures on the livelihood of ordinary citizens - with no key figures and information available - making it difficult to evaluate the policy impact. Such a lack indicates that there was no serious thought in the course of policy formulation. Key data and information that are absent in the consultation document are suggested as follows:

- a. As proposed, if a licensed hawkler has been convicted of breaching the regulation six times within three months, his/her license could be revoked in accordance with the mechanism. How many hawkler licenses in 2010 could be cancelled if the proposed measure has been implemented?
- b. The consultation paper provides no statistics of market stalls whose lease was terminated due to the breaching. These data are of crucial importance for stall hawkers whose might be badly affected by the new regulation in the course of policy evaluation.

Threatening the Grassroots Economy and Local Culture

6. Although Hong Kong is a highly commercialized society, hawkler activities are still an important part of the overall economy. The so-called "Grassroots Economy" enables ordinary citizens to purchase cheaper goods and services. In addition, hawkers as a business could alleviate unemployment problem and play a relieving role during economic downturn in particular. In the light of this, the Government should acknowledge the social function of hawkers, where the introduction of the cancellation mechanism is so unfavourable that the livelihood and business environment of stall hawkers may be further threatened. Instead, the existing hawkler policy attaches greater importance to public hygiene and social order, whereas the proposed measure makes hawkers lives harder, not to say the basic needs of ordinary citizens being adversely affected, therefore not desirable.
7. Moreover, hawkler activities are also an important and distinctive part that constitutes our local culture. "Hawker shopping area" is one of the Tourism Board's recommended sight-seeing spots that are powerful enough to reveal the city's vibrant image. It is disappointing that the Government keeps suppressing their activities rather than giving them a helping hand to improve the business environment and to solve difficulties that they may encounter.

Management Oriented and Outdated Policy

8. Our opposition stance is also attributed to the biased nature of the proposed mechanism as it solely aims to increase the deterrent effect of law enforcement actions by granting the Government more power. Even worse, many rules and regulations of the hawker policy are outdated and inconsiderate to the difficulties facing the hawkers. If “provision of a better business environment to hawkers” can be incorporated as one of the policy objectives, the proposed offences under the cancellation mechanism of hawker license are nothing but obviously bureaucratic and unreasonable. Details are as follows:

a. **“Hawking unspecified commodity or service”**

Although hawking is a small business, it must respond quickly to the changes of community needs by changing what they sell. As long as the stall is managed by a licensed hawker or registered assistant and the commodities being sold have no safety problem, there is no strong reason toward cancellation of hawkers’ license simply because they failed to comply with obsolete bureaucratic procedures.

If making a declaration is what the Government considers as necessary, an easy registration and approval mechanism (e.g. telephone or on-the-spot reporting) should be put in place. By doing so, there would be a high degree of flexibility for the hawkers to ensure the diversity of goods and meet the community needs.

b. **“Employing an assistant without registration” and “Not being personally present at the pitch when business is being carried on”**

Hawkers in general work laboriously for long hours and play a dual role as both a merchandiser and salesperson. Therefore, hawkers may have a division of labour with their assistant(s), especially when they are out of their stalls for some time. It is believed that the existing arrangement has already taken care of practical needs of hawkers. Given that the proposed measure is targeted on subletting of stalls, it would be more effective by simply stepping up of the existing penalty.

Generally speaking, it is indispensable of the Government to ensure a favourable business environment for all kinds of businesses. To this end, the Government should provide hawkers with a relatively easy reporting system to facilitate easy law compliance.

- c. **“Commodities being hawked and equipment or objects used in connection with hawking are placed outside the boundaries of the pitch”, “Causing obstruction” and “Breaching of conditions of licence related to the size, height or construction materials of stall by a licensed hawker”**

These 3 offences are owing to the outdated specification of “a stall”. Under existing stipulations, the optimal size of a stall is 3 feet by 4 feet. Activities of hawkers including selling, storage and room for movement are all confined to this 12 square feet area, which is obviously not enough, making it difficult for hawkers to comply with the existing regulations. It is therefore not justifiable for the Government to impose a heavier penalty without also considering a serious revision of sizes and area of existing stalls.

It is suggested that the Government should relax the existing regulation concerning sizes and area of stalls, which could fundamentally address the problem of hawking outside the boundaries of the pitch. In so doing, there should be no excuse for hawkers not to comply the regulation.

- d. **“Installing or connecting electrical appliances, electrical wiring, or other electrical equipment without approval”**

Electricity supply and electrical appliances are essential equipment for hawker stalls, and most stalls have already installed a certified independent electricity supply. Thus, illegal electrical connection of appliances may be due to the physical limitation of their “premises”.

Therefore, if power companies and the Government can offer adequate assistance, illegally installing or connecting electrical appliances will not be a difficult problem anymore. Comparatively speaking, it would be more effective to providing support and assistance than merely imposing heavy penalty.

- e. **“Failing to comply with order to vacate allocated pitch either permanently or temporarily (only applicable to circumstances under which the vacating is necessary to improve fire safety)”**

If fire safety has been manipulated by the Government as an excuse to trigger revocation of hawker license, the argument should be clearly defined with provision of justified reasons. Since the consultation on the management of fixed pitch hawker areas is still underway, this is what we should take into account.

- f. **“Subletting of stall” & “Making false declaration for the purpose of obtaining a license”**

These two offences are serious offences that might involve breach of trust and illegal returns. Concerned offenders should be subject to cancellation of their license.

Address the Problems by a Holistic Hawker Policy

9. As reiterated, the existing hawker policy is obsolete. Instead of cold-blooded law enforcement in suppression of hawker activities, the Government should put in place new policy objectives that keep abreast of the times to manage hawker activities. In fact, the hygiene and environmental condition has now been greatly improved. More importantly, the decrease in the number of hawkers has even met the critical point that needs conservation.
10. To conclude, the Government should be always attentive to the latest social situation and to review the obsolete policies on time. Apart from environmental and safety issues, the Government should also recognize hawker activities as an important part of Hong Kong grassroots economy as well as local culture. In the light of this, it would be important to incorporate the development of the grassroots economy and cultural heritage into the hawker policy. By doing so, it could help create a favourable business environment for hawkers, so that hawker activities can head for a positive direction.
11. The Government should formulate a holistic hawker policy and review problems that hawkers encounter, including revising stall design, and improving

community planning to realign the spatial distribution of hawker markets. Last but not least, the optimal number of hawker licenses, duration and validity of the licences and other day-to-day operating arrangements should be revisited as well.

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March 2012