

Consultation on the Mechanism for Cancellation of Hawker Licences

The Administration is consulting the relevant stakeholders, including the District Councils concerned and representatives of stall hawkers, on the proposed mechanism for cancellation of hawker licences. The consultation period will run until 31 March 2012.

Proposal on the Mechanism for Cancellation of Hawker Licences

All hawkers are subject to regulation under the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislation, the Hawker Regulation (Cap. 132AI). They provide for the issue, renewal and cancellation of licences; the sale of specified commodities; application for permission to appoint assistants and deputies; the delineation, control and use of fixed pitches; and no obstruction caused by licensees, etc.

Stall hawkers are duty-bound to abide by the licensing conditions. However, according to past experience in stall management, reliance on the self-discipline of traders alone is not sufficient. There are stall hawkers who persist in blatantly violating regulations despite repeated prosecutions. According to Food and Environmental Hygiene Department (FEHD)'s records, there were about 7 000 convicted cases in 2010 involving licensed hawkers or their assistants, etc, 28% of whom were prosecuted four times or more. The Hawker Regulation has prescribed penalties for various offences, and FEHD has taken vigorous law enforcement actions and stepped up enforcement efforts as the circumstances may require. Despite all these, it is obvious that prosecution against individual non-compliance cases on its own cannot effectively deter repeated offences committed by licensed hawkers. In view of some hawkers' disregard for the existing penalties and to enhance the effectiveness of law enforcement, the Administration proposes to introduce a mechanism for the cancellation of hawker licences with a view to achieving a greater deterrent effect.

Under Section 125(1)(b) of the Public Health and Municipal Services Ordinance (Cap. 132), the Director of Food and Environmental Hygiene (DFEH) may exercise discretion to cancel any licence. Currently, FEHD has already put in place policies to suspend or cancel the licence / permit of a licensed food premises and to terminate the tenancy of a public market stall found to have breached the relevant regulations and tenancy regulations. Taking into account that the business nature of hawkers is similar to that of market stalls, we propose to formulate a mechanism for cancellation of hawker licences with reference to the existing arrangements for the termination of tenancy for market stall tenants who have breached the Public Health and Municipal Services Ordinance (Cap. 132) or its subsidiary legislation (**Annex I**).

Offences Under the Mechanism for Cancellation of Hawker Licences

Some irregularities relating to licensed hawkers, such as trading outside the permitted area, storage of goods outside the approved area after business hours, stall size exceeding the specified dimensions, stall subletting or illegal connection of electricity, etc, pose a much higher fire risk than others. We therefore propose that the conviction of offences relating to these irregularities should be included in the

mechanism for cancellation of hawker licences. These irregularities are set out in **Annex 2**.

Proposed Mechanism for Cancellation of Licences

The mechanism for cancellation of licences should be applied based on the number of prosecutions and convictions within a period of time. It is proposed that if a licensed hawker is convicted for six times within three months for breaching any hawker-related provisions under the Public Health and Municipal Services Ordinance (Cap. 132) or its subsidiary legislation, the Hawker Regulation (Cap. 132AI), DFEH may consider cancelling his/her hawker licence in accordance with the mechanism.

Serious offences, including stall subletting, illegal connection of electricity and providing false information to obtain a hawker licence, should be given harsher penalties. Stall subletting considerably increases the fire risks by aggravating the problem of unauthorised trading outside the approved area, and illegal connection of electricity can even cause fire. Providing false information in order to acquire a hawker licence is also a serious offence. Therefore, we suggest that if a licensee has committed any one of these three offences, DFEH may consider immediate cancellation of his/her hawker licence.

The Administration also suggests that if the licensee is dissatisfied with the decision of DFEH, he/she may make representations in response to the decision within seven days. This will give the licensee an opportunity to express or submit his/her views or disagreement to the material facts of the case. DFEH will consider the representations and decide whether to affirm or to vary his original decision.

Appeals Mechanism

If DFEH affirms his decision to cancel the hawker licence and the licensee is dissatisfied with the decision, he/she may appeal to the Licensing Appeals Board (LIAB) within 14 days under Section 125(9) of the Public Health and Municipal Services Ordinance (Cap. 132). After hearing, the LIAB may affirm, vary or set aside the decision of DFEH. Under Section 125B(4), if the licensee is dissatisfied with the decision of the LIAB, he/she may appeal to the Municipal Services Appeals Board (MSAB) within 14 days after receiving the decision of the LIAB.

**Arrangements for Termination of Tenancy Agreement of Public Market Stalls
due to Breaches of Public Health and Municipal Service Ordinance (Cap.132)
or its Subsidiary Legislation**

- (a) If four offences resulting in conviction under the Public Health and Municipal Service Ordinance (Cap.132) or its subsidiary legislation are registered against the stall's tenant, agents or employees within a period of 12 months, the Director of Food and Environmental Hygiene (DFEH) will issue a "notice of intended termination of tenancy" (the Notice) to terminate the stall's tenancy agreement. If the offence committed is considered of a serious nature, only one conviction will warrant the issue of the Notice immediately by the Food and Environmental Hygiene Department;
- (b) If the tenant is dissatisfied with DFEH's decision, he/she may make representations in response to the intended termination decision in seven days (in case of serious offences where the Notice had been immediately issued by DFEH, representations should be made within four days). This would provide a useful opportunity for the tenant to submit his/her views or disagreement with the material facts of the case. DFEH will then consider the representation submitted and decide on whether to affirm or vary his original decision; and
- (c) If DFEH affirms the decision of terminating the tenancy, and the tenant is not satisfied with the decision, he/she may lodge an appeal with the Municipal Services Appeal Board (MSAB) within 30 days. After hearing, MSAB may affirm, vary or set aside the decision of DFEH.

Annex II

Offences Under the Mechanism for Cancellation of Hawker Licences

Offences	Relevant Provisions	Maximum Penalty
Hawking unspecified commodity or service	Section 5(2) of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Employing an assistant without registration	Section 12(1A) of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
*Subletting of stall	Section 13(1) of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
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)	Sections 34(1) and 34(4) of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Not being personally present at the pitch when business is being carried on	Section 38 of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Commodities being hawked and equipment or objects used in connection with hawking are placed outside the boundaries of the pitch	Section 48 of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Causing obstruction	Section 53 of Hawker Regulation	Liable to a fine of \$5,000 and imprisonment for one month, and to a further daily fine of \$100.

Offences	Relevant Provisions	Maximum Penalty
*Installing or connecting electrical appliances, electrical wiring, or other electrical equipment without approval	Section 54 of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
Breaching of conditions of licence related to the size, height or construction materials of stall by a licensed hawker	Section 55 of Hawker Regulation	Liable to a fine of \$5,000 and to a further daily fine of \$100.
*Making false declaration for the purpose of obtaining a licence	Section 56(7) of Hawker Regulation	Liable to a fine of \$10,000 and to imprisonment for six months.

Note: * Serious offence. Upon conviction of a serious offence, DFEH may consider cancellation of the licence with immediate effect.