思匯
CIVIC EXCHANGE

MANAGING VIBRANT STREETS

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Executive Summary

Study Objective

In the 2017 Policy Address, Chief Executive Carrie Lam stated that the Government would take forward measures to improve Hong Kong's pedestrian environment. This would encourage walking for short-distance travel, improving air quality, and alleviating traffic congestion. Furthermore, the Development Bureau's "Hong Kong 2030+" territorial development strategy also aims to enhance the uniqueness, diversity and vibrancy of Hong Kong's districts and streets. The Transport Department now has a dedicated Walkability Task Force, while the 2018-19 Government Budget set aside HK $8 billion for proposals from the 18 districts to improve their neighbourhoods, including pedestrian links.

However, creating walkable and dynamic streets requires not just investment in better pedestrian infrastructure, but also in street management policies that ensure walking is a comfortable, safe, enjoyable and interesting experience. This is especially important in a densely populated city like Hong Kong where there is keen competition for urban space.

Hong Kong currently has no cohesive policy for street management. There is a patchwork of policies, laws, regulations and practices governing various activities from hawking to street performance. Rather than being part of an overall vision, each issue is handled separately and often inconsistently. Implementation of existing rules is also hampered by interdepartmental and intradepartmental silos, outdated laws, and unwieldy bureaucratic procedures. As a result, existing street management policies fail to promote desirable forms

of street vibrancy or regulate activities that cause public nuisance. Street management problems have undermined political and public support for pedestrianisation, such as when the Yau Tsim Mong District Council voted to reduce the hours of the Sai Yeung Choi Street South pedestrian scheme in Mong Kok in late 2013. It is therefore important to review street management in Hong Kong so that the streets can be transformed from vehicledominated corridors to walkable, quality public spaces.

This report takes a first step by examining the tangle of policies and rules that currently govern, or fail to govern, six major areas of street activity: political activities, charitable activities, servicing activities (e.g. deliveries, storage and waste disposal), shopfront extensions, itinerant commercial activities (including hawking and commercial promotion), and recreational activities. Through document research, review of current legislation, and interviews with current and former district councillors and civil servants, this report identifies problems and makes some preliminary policy recommendations to address existing issues and to better manage and facilitate diverse and vibrant walkability initiatives.

Problems

This report identifies six major problems with street management at present:

a) Silos in Government

Street management responsibilities are dispersed between up to nine government departments, with the Food and Environmental Hygiene Department (FEHD), the Hong Kong Police Force (HKPF), the Lands Department (LandsD), the Home Affairs Department (HAD) playing the most important roles. As many street management issues cross jurisdictional lines, they get caught up in interdepartmental and intradepartmental debates over whose responsibility they are. District Officers under the Home Affairs Department must coordinate complicated and time-consuming joint-departmental operations to handle routine issues from illegal bicycle parking to shopfront extensions. As street activities are complex and dynamic, activities which do not fall neatly into any category under current legislation, like streetside mobile salespeople or buskers, are not fully addressed by any department.

b) Misaligned priorities

Due to policy priorities first set in the 1970s, there is a disproportionate focus on hawker control but little to no active management of other activities such as commercial promotional activities and street performance.

In the 1970s, the then-Urban Council focused heavily on relocating hawkers, defined as vendors of street food and inexpensive goods, off the streets in order to clean up the city and free up space for vehicular traffic. Hawker licensing was frozen and the Hawker Regulation was passed. Currently, the FEHD employs 190 dedicated Hawker Control Teams, comprising over 2,000 frontline enforcement officers. However, this policy no longer aligns with the public's current aspirations, given community support for the preservation of

hawking and the importance of hawker markets to Hong Kong's tourism industry. Meanwhile, modern-day street activities, which potentially cause serious nuisances, are inadequately managed. Commercial promoters who sell third-party services such as gym memberships and mobile phone plans are not included in the legal definition of hawking and are not required to have licenses. They are only controlled by general ordinances concerning street obstruction and unauthorised display of advertising. Street performance is another major gap as there is currently no licensing scheme to manage noise, resolve turf conflicts, or promote responsible performance behaviour.

c) Policies do not facilitate vibrant street use in a fair or systematic way

Many street activities that are currently treated as nuisances can in fact contribute positively to the urban environment if appropriately managed. Activities such as street performance, hawking, outdoor dining and shopfront extensions can add colour to neighbourhoods and enhance the public's enjoyment of streets and public spaces. However, current policies do little to facilitate them in appropriate locations: Very few new hawker licenses have been issued since the 1970s, and the number of hawkers has fallen from about 9,200 in 2000 to about 5,900 in 2016, a decline of 36%. Community groups attempting to organise temporary bazaars face complicated bureaucratic hurdles. Restaurants hoping to provide outdoor dining face a slow and complicated application process. There is no procedure for retailers other than restaurants to legitimise shopfront extensions, only an opaque, ad-hoc process by which District Management Committees (DMCs) grant exemptions in the form of "tolerated areas". One significant obstacle to vibrant street activities is opposition from District Councils and government departments, which frequently adopt a "Not In My Backyard" attitude aimed at avoiding any complaints.

d) Inconsistent and arbitrary rules on the use of government land for commercial purposes

For some time, there has been a lack of joined-up thinking in Government about how and when to permit the use of public space for commercial activities, and how much to charge commercial users for the privilege. This has led to highly inconsistent policies for different types of commercial users, including restaurants, shops, commercial promoters, and bike-share companies. Some commercial users must apply for permission and pay land use charges, while others are essentially unregulated and able to occupy public land for free. Major differences in treatment lead to complaints of unfairness from different sectors.

e) Outdated legislation that is no longer enforceable or does not fit the current situation

Much of the current legislation governing street activities is outdated, which causes problems ranging from old definitions that do not fit current activities (e.g. the definition of hawking), laws that are no longer enforceable or relevant, to fees and fines whose value has been eroded by inflation to the point where they are no longer meaningful. Also problematic is the absence of rules or policies concerning several modern-day street management issues, such as commercial promotion, bike shares, construction skips, and the use of sound amplification devices.

f) Inefficient and cumbersome bureaucratic procedures

The application of existing rules and policies is hampered by unwieldy procedures. For example, restaurant applications for outdoor seating must be approved by seven government departments and undergo a public consultation process in which a single objection might lead to rejection. Community groups seeking to host temporary hawker bazaars must gain approval from up to 10 different departments. Procedures for removing objects which are illegally occupying government land are inefficient – LandsD officers must post a 24- or 48-hour warning notice on the object, and may confiscate the object only if it has not been moved during the warning period. Even if the object is moved by a few feet or taken away and replaced a day later, another 24- or 48-hour warning period must begin.

Policy Recommendations

This report makes a number of policy recommendations to address these six major issues. First and foremost, a clear and well-considered policy statement is required to define the vision for the public realm, celebrating the uniqueness, diversity and vibrancy of Hong Kong's districts and specifically the quality of the experience on its streets. The pedestrian experience should be made comfortable, safe, enjoyable and interesting by making sure that they are well-managed given the densely populated living environment where there is keen competition for urban space.

To support this policy, corresponding reforms should be implemented, some of which are administrative in nature and others which require changes in law.

1) The major administrative recommendations include:

- **Promote joined-up government**

Street management involves departments falling under several bureaux including Home Affairs, Food and Health, Security, Development, Transport and Housing and the Environment, but is generally considered a low priority by all of them. Street management policy needs to be framed as part of a clear city betterment agenda in the context of the Government's Hong Kong 2030+ territorial development strategy. This agenda must be supported by clear leadership. To that end, the Government may consider appointing a City Betterment Commissioner as a special post under the Chief Executive.

At the level of frontline enforcement, the Government should also consider setting up standing interdepartmental teams of street management officers to supervise selected major pedestrian areas. They would operate under the supervision of one designated department (i.e. HAD) but would include staff empowered by various departments such as the Police, FEHD and Lands Department to enforce the relevant laws or regulations. This may reduce the need for District Officers to organise joint operations. Also, international examples of walkability and placemaking efforts demonstrate that making spaces appear cared for, encourages people to use public spaces in better and more considered ways.

• **Address intra-departmental silos in FEHD**

One of the Government departments most affected by intra-departmental silos is the FEHD. The split in job responsibilities between its role as a licensing authority and a provider of sanitation services has made its enforcement of existing regulations less efficient. As the licensing authority, FEHD has different teams looking after outdoor restaurant seating, shop extensions, hawker control and others. Hawker Control Teams often do not address street obstructions that do not involve illegal hawking. Meanwhile, the Cleansing Section can only ask for the objects to be temporarily moved to allow street cleaning. Hawker control should be expanded into a broader street management division in order to address street management problems more holistically. Reframing the FEHD's mission as "street management" would mean broadening their priorities beyond food safety, hygiene, nuisance and obstruction to include vibrancy and an ability to develop controls based on local circumstances and aspirations.

Facilitate vibrancy through outdoor dining, shopfront extensions and hawking

The Government should consider harmonising its policies concerning shopfront extensions and outdoor dining so that both may be permitted in appropriate locations. This can be done by setting up an application system to allow shopfront extensions where there is enough space and where they contribute to the district's character. For the same reason, there is also a need to further streamline the approval process for outdoor restaurant seating. One way to do so may be to create design guidelines to clarify requirements, reduce the need for vetting by multiple departments, and present business owners with a range of design options that fulfill requirements.

The Government should also consider reissuing hawker licenses in order to stem the decline of outdoor markets. More can also be done to facilitate temporary bazaars and other street events.

• **Set up a licensing scheme for street performers**

General legislation concerning noise and obstruction has not been successful in managing large clusters of street performers, mainly in Mong Kok, where noise has severely impacted residents and shop staff. There is a need for a licensing scheme to manage and facilitate street performance. Making reference to overseas examples, this report discusses principles for setting up a licensing scheme that would preserve street performers' rights to free expression while managing their impact on surrounding areas. A location-based rather than a one-size-fits-all approach is recommended, as different rules may be suitable for different areas.

• **Set up a registration scheme for commercial promoters**

The lack of management of commercial promotion activities is a major loophole, which has resulted in many pedestrian areas becoming occupied by large numbers of commercial booths, leaflet distributors, touts, and advertising banners. The Government should consider setting up a registration scheme to manage these activities in a manner similar to itinerant hawkers.

If licensing and registration schemes for street performers and commercial promoters are implemented, it is important for the Police and FEHD to check licenses regularly. The risk of losing a license or being deregistered would give incentives for people to behave responsibly.

2) This report also recommends that the Government review the following laws in order to update them and improve their effectiveness:

- Review the definition of hawking in the Public Health and Municipal Services Ordinance and consider including cashless sales of third-party services. This would allow the FEHD to manage these salespeople as a type of itinerant hawker.

- Consider whether to regulate the use of amplifiers. Currently, the Summary Offences Ordinance requires people to obtain Police permission to play musical instruments in the street, a provision that is not currently enforced due to protections on free expression. However, the cause of excessive noise is not necessarily due to musical instruments, but the use of heavy amplification.

- Review the fees for part-time occupation of Government land in the Land (Miscellaneous Provisions) Regulations. The schedule of fees has not been updated since 1976, so restaurants with authorised outdoor seating areas only have to pay between HK$ 1 and HK$10 per square metre per year. The Government should also consider whether to apply them to other types of commercial street users on the grounds that businesses use public land for profit-making purposes.

- Review outdated penalties. The penalties for several nuisance-related offences are outdated, especially in the Summary Offences Ordinance. Some provisions date back to 1949 and have fines as low as HK$ 50 (e.g. for “street cries”), rendering them meaningless today. The Government should review outdated legislation and consider whether to update fines, or repeal provisions that are no longer relevant. Fines should provide an effective deterrent, perhaps with escalating penalties for repeated infractions, in order to prevent businesses from writing off fines as part of their business costs.

- The Government may also consider reviewing the Public Cleansing and Prevention of Nuisances Regulation and the Waste Disposal Ordinance in order to clarify responsibilities for pavement obstructions and fly-tipping (or illegal dumping), respectively. One significant problem in enforcement is that property owners are often able to evade responsibility as they were not the ones who directly committed the offence, but knowingly allowed others to do so. Building owners or occupants are not

currently required to keep abutting pavements free of obstruction, while vehicle owners cannot be held responsible if their vehicles are used for fly-tipping.

3) In the longer term, the Government should consider enacting new legislation for the comprehensive management of selected pedestrian zones.

- Similar to the Public Pleasure Grounds Regulations, which designate sites as recreational grounds to be managed by the Leisure and Cultural Services Department, a "Management of Pedestrianised Zones Ordinance" would enable the Government to designate major pedestrian areas for management by a unified authority. This authority would be able to set out a code of conduct for using the pedestrian area and designate zones for different activities. It may also take on responsibilities such as liaising with businesses to better coordinate deliveries and waste management. The Government would need to appoint or create a body to be responsible for implementation. It may consider different management models, e.g. assigning a government department, empowering District Councils to do so, or forming non-governmental associations comprised of local residents and business owners.

4) Finally, the Government should engage with the public and with District Councils on future changes in street management policy or legislation.

As preferences and values may vary from district to district, local residents should have a say in the types of street activities they would like to see in their districts. Questions that the public should be consulted on include:

- What type of commercial activities should be encouraged, permitted, or prohibited in public space? What kind of commercial activities are beneficial to the public's enjoyment of public space, and which are primarily nuisances?

- Should businesses that use public space have to pay fees to use Government land?

- Should a street performance licensing scheme be implemented, and how should it be designed in order to balance the interests of street performers and local residents?

- What can the Government do to support better street use practices on the part of the private sector? For example, could the Government provide any logistical support or services to help street-level shops better manage their waste?

- What types of activities should the Government foster in order to promote more vibrant streets? E.g. festivals, farmer's markets, car-free days? The Government should also expand collaboration with the non-profit and academic sectors to bring more diverse interventions to streets. For example, WalkDVRC, a non-profit pedestrisation group, organised a Sunday street closure on Des Voeux Road Central in September 2016hosting artistic, cultural, sporting and child activities that attracted 14,000 visitors.

In consulting the public, Government departments and District Councils should make use of innovative people-centric public engagement methods in order to promote collaborative

problem-solving and consensus-building instead of relying on traditional public consultation forms or complaints to gauge public views.

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