

LCQ5: Operation of flea markets

Following is a question by the Hon Michael Tien and a reply by the Secretary for Development, Mr Michael Wong, in the Legislative Council today (October 27):

Question:

It was reported that in August this year, a major fire broke out at Siu Lam Flea Market in Tuen Mun, resulting in more than 100 stalls being burnt down. Regarding the operation of flea markets, will the Government inform this Council:

- (1) of the licences and permits that operators of such type of markets are required to obtain; the legal liabilities in respect of land use, fire safety, insurance, etc. to be fulfilled by operators;
- (2) of the measures in place to ensure that operators will fulfill the aforesaid liabilities, and whether it regularly conducts inspections and requires operators to regularly submit reports in this regard; and
- (3) of the current number of markets of the same type in Hong Kong; whether the Government will comprehensively review the regulatory policies on such markets, including the requirement that operators should obtain licences and permits, and the measures to monitor operators' fulfillment of the relevant terms and conditions; if so, of the details; if not, the reasons for that?

Reply:

President,

There is no universal definition of "flea market". A general understanding is that the term broadly refers to a simple retail place where stalls gather together to operate. Nowadays, flea markets in the community differ in nature and mode of operation. Some are initiated by civic organisations and operate with a specific community theme, while others are purely market-led commercial operations. From the perspective of land administration, land which can be used for flea market use mainly includes the following three categories: (i) private land or premises which, in accordance the relevant lease conditions or with a waiver granted by the Lands Department (LandsD), can be used as a flea market or similar purposes; (ii) short term tenancy (STT) sites granted by direct grant by the LandsD on application by non-governmental organisations with support from the relevant policy bureau; and (iii) STT sites granted through open tender by the LandsD where composite uses including retail or marketplace purposes are permitted.

After consulting the Food and Health Bureau and the Security Bureau, my reply to the three-part question of the Hon Michael Tien is as follows:

- (1) Depending on its operational details and scopes of activities, it may be necessary for a flea market to obtain relevant permits or licences.

As far as land use is concerned, the operations of a flea market must comply with the terms of the relevant land instruments, such as leases, waivers or STTs, including the terms on uses, subletting restrictions, etc. Otherwise, prior application must be made to the LandsD for amending the terms of the relevant land instruments. If approved, the applicant will generally have to pay additional rent, premium or waiver fee to reflect the increased value of the land or buildings, and appropriate terms will be imposed according to the advice of the relevant government departments.

Regarding building and fire safety, the Buildings Ordinance stipulates that building works on land under an STT or private land can only commence upon obtaining approval of plans and consent to commencement of building works from the Buildings Department, unless they meet the requirements of exempted works or belong to specified minor works under the minor works control system. The building works must also meet the design and construction standards on fire and structural safety under the Buildings Ordinance and its relevant subsidiary legislations. Moreover, if the relevant operations require applications for land instruments or various types of licences, the Fire Services Department will also impose, in the land instruments or licence, requirements to provide fire services installations and equipment, ensure that all means of escape from the venue are kept free from obstruction, etc.

In addition, if sale of cooked food or specified food products (e.g. fresh and frozen meat) is involved in the market, relevant food licences have to be obtained in accordance with the Food Business Regulation; if sale of liquor is involved, a liquor licence has to be obtained in accordance with the Dutiable Commodities (Liquor) Regulations; if entertainment (e.g. stage performance, exhibition, etc.) as defined in the Places of Public Entertainment Ordinance is involved, a places of public entertainment licence or temporary places of public entertainment licence has to be obtained.

As with other business activities in general, at present government departments have no particular requirement that such flea markets should take out an insurance policy on their business operations. Operators can decide on their own, having regard to their business nature and risk assessment, whether to procure an insurance policy for protecting themselves and others as well as ensuring that they are able to fulfil any relevant legal responsibilities.

(2) Government departments enforce the requirements and conditions of the permits/licences under their purview according to their established mechanisms, including regular inspections and follow-up investigations in response to complaints or reports. Where any irregularity is substantiated, enforcement actions will be taken, including issuance of warnings or relevant instructions for rectification. Depending on the circumstances, actions to cancel the permit or licence issued, and criminal prosecution if contravention of criminal law is involved, will be considered.

(3) The Government does not have comprehensive statistics on flea markets and similar marketplaces, since permission from the LandsD is not required for individual markets operating in private premises where such uses are not in

breach of the original land instrument (for example, those operating in a shopping centre under a commercial lease). As far as those land instruments specifically permitting the use of flea markets or similar marketplaces are concerned, there are at present three flea markets or similar marketplaces operating under such instruments (not including the Siu Lam Flea Market in Tuen Mun mentioned in the question which is now closed) according to the LandsD's information.

With regard to regulation, the Government currently has no intention to establish new licensing or regulatory systems for these markets. In fact, if business operations of such a temporary nature have to go through elaborate and time-consuming approval processes, it will be difficult for such businesses to start operation. When considering the matter, the Government has to take into account that the regulatory control should not unduly hinder the development of these small-sized business operations. Balancing relevant considerations, we are of the view that it is appropriate for government bureaux and departments to maintain the existing practice of handling applications, monitoring compliance and enforcing the requirements for these markets under their respective purview.