MANAGING VIBRANT STREETS

Carine Lai
Antonio Da Roza

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ABOUT CIVIC EXCHANGE

Civic Exchange is an independent public policy think-tank with a vision to shape a liveable and sustainable Hong Kong. Our mission is to engage society and influence public policy through research, dialogue and the development of practical solutions. We undertake research in three major areas: air quality, nature conservation and the urban environment, with an overarching framework of promoting wellbeing.

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PREFACE AND ACKNOWLEDGEMENTS

Street management is an issue which affects millions of Hong Kong residents, businesses and visitors, in a city with some of the world’s greatest urban densities. The Government is faced with the challenge of promoting vibrant street life, which is integral to local culture, while also regulating problems like overcrowding and disturbances. This report, “Managing Vibrant Streets,” takes a deep look into the myriad of problems related to busy pavements and pedestrian zones, and offers recommendations on how stakeholders can work together to develop solutions.

Civic Exchange is grateful to the report’s authors, Carine Lai and Antonio Da Roza, for spending almost a year untangling the governmental, legal, technical and social facets of this complex issue, which has deep importance and impact for Hong Kong residents.

“Managing Vibrant Streets” was built on a foundation of years of research by Civic Exchange on issues such as walkability, public open space and urban planning, supported by WYNG Foundation and Dr Anthony Ng. Peer reviewers who kindly lent their expertise in these fields included Civic Exchange Board Director Paul Zimmerman, Civic Exchange Fellow Yanyan Yip, PILnet Hong Kong Director Leontine Chuang, and members of the Civic Exchange Walkability Expert Panel, Dr Peter Cookson Smith and Dr Louie Sieh.

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“Managing Vibrant Streets” was the product of tireless effort by the Civic Exchange team. Programme Director Michele Weldon shaped the research; Bill Leverett and Joyce Lau edited the manuscript; Cosmo Lo helped with promotion; John So and Nomis Fung provided the Chinese translation; interns Cadence Lin Tsz-ching and Nicky Yeung Chi-wai compiled research on overseas case studies; while Carlo Chan assisted on research. In addition, Monica Fu, Astor Shek, Karen Lee and Thanh Nguyen provided street photography; while Amy Woo of DESiGNORM created the cover design and layout.

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“Managing Vibrant Streets” was a collaborative effort between Civic Exchange, our network of experts, sister organisations WYNG Foundation and Walk DVRC, contributors from Government and society. We would like to thank everyone who was involved with this in-depth research, and hope that it provides insights into how Hong Kong’s streets can be better managed to benefit all citizens of this great city.

Winnie Cheung
Civic Exchange CEO
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**ACRONYMS AND ABBREVIATIONS**

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<tr>
<td>DC</td>
<td>District Council</td>
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<td>DMC</td>
<td>District Management Committees</td>
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<td>EPD</td>
<td>Environmental Protection Department</td>
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<td>FDH</td>
<td>Foreign domestic helper</td>
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<td>FEHD</td>
<td>Food and Environmental Hygiene Department</td>
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<td>HAD</td>
<td>Home Affairs Department</td>
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<td>HYD</td>
<td>Highways Department</td>
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<td>HKPF</td>
<td>Hong Kong Police Force</td>
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<td>LandsD</td>
<td>Lands Department</td>
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<td>LegCo</td>
<td>Legislative Council</td>
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<td>SWD</td>
<td>Social Welfare Department</td>
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<td>TD</td>
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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 vehicle-dominated 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:
EXECUTIVE SUMMARY

- 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 pedestrianisation group, organised a Sunday street closure on Des Voeux Road Central in September 2016 hosting 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.
INTRODUCTION

1.1 Introduction

In the 2017 Policy Address, the Chief Executive announced that the Transport and Housing Bureau would consolidate past efforts and implement new measures to create a pedestrian-friendly environment in order to promote sustainability and reduce Hong Kong’s reliance on motorised transport. Within the Transport Department, a Walkability Task Force has been set up to take pedestrian environment improvements forward under the themes of “smart”, “connected”, “enjoyable” and “safe”. It will focus on improving pedestrian infrastructure such as covered walkways and hillside escalators, has commissioned a 30-month-long walkability study, and plans to test innovative measures in two selected pilot areas.

These measures reflect a growing recognition amongst policymakers of the importance of walkability to sustainable, liveable cities. They demonstrate an attempt to achieve a more equitable balance between vehicles and pedestrians than in the past. Overseas, investments in walkability have resulted in benefits in pedestrian safety and mobility, public fitness and health, and air quality. They have also benefited local economies by improving the urban environment and increasing customer footfall. Enhancing walkability also brings intangible community benefits such as creating spaces for social interaction, fostering a sense of community, and deepening the identities of different localities.

However, pedestrian-friendly planning requires more than better infrastructure; it also requires appropriate street management policies — “software” matters as much as “hardware”. As space is at such a premium in Hong Kong, the expansion of pedestrian areas attracts activities other than walking. These activities include promotional touting, shops extending their shopfronts into the pavement or pedestrianised area, street performances, recreational activities, charitable fundraising and political demonstrations. Necessary servicing activities such as parking, loading, unloading, temporary storage and sorting of goods, and waste removal also compete with other activities for pedestrian space. While these activities bring benefits to society by providing enjoyment and desired services
to pedestrians or by enhancing the competitiveness of businesses, they may also cause obstruction, nuisance and noise which affect other street users, businesses, and residents. Ineffective management of these activities results in failure to realise the full benefits of pedestrianisation and may even degrade the pedestrian environment to the point where public support for pedestrian schemes is undermined. This in turn discourages Government from addressing the more serious problem of vehicle-dominated streets.

In the interest of returning streets to the people for public use and enjoyment, it is necessary to raise the issue of how activities in pedestrian areas are regulated, and how the management of activities taking place in these areas may be improved.

Therefore, the purpose of this report is to analyse the existing policies and regulatory frameworks governing each of six areas of street activity, listed below in Section 1.8. This study seeks to identify shortcomings including outdated approaches, jurisdictional gaps, and inefficiencies and inadequacies in implementation that impact upon pedestrianised areas, in order to map out the issues which need to be addressed and to promote more holistic thinking about street management. The study also suggests how to move forward with these issues via potential policy solutions to promote a more pedestrian-friendly street environment.

1.2 Background

Concerns about street management problems have hampered past pedestrianisation programmes. In 1999, the Hong Kong Government commissioned a consultancy study to identify “crowded and more polluted spots” and to develop pedestrian schemes in order to “ensure adequate pedestrian linkages … minimise conflict between pedestrians and vehicles, reduce traffic volume and associated air pollution and provide a better walking environment”.

This led to the proposal and implementation of several pedestrian schemes in 2000 in different locations including Causeway Bay, Central, Mong Kok, Tsim Sha Tsui, Wan Chai, Sham Shui Po, Jordan, Stanley, Shek Wu Hui, Sheung Shui, and Yuen Long. These efforts were led by the Transport Department, which implemented three types of pedestrian scheme:

I. Full-time Pedestrian Street: where pedestrians take absolute priority and vehicular access is restricted to emergency services only, though exceptions may be made for service vehicles.

II. Part-time Pedestrian Street: in which vehicular access is allowed only in specific periods, with no on-street parking spaces. Loading bays, however, may be provided for loading or unloading purposes.

III. Traffic Calming Street: in which footpaths are widened, on-street parking spaces are reduced, and taxi and minibus stands are relocated if practical. Vehicular access is not restricted, but slowed down via speed tables, kerb build-outs, sharpened corners, road narrowing and other traffic calming measures. In a small number of cases, traffic-calmed streets were made Pedestrian Priority Areas, where drivers are required to yield to pedestrians walking in the carriageway.
The Transport Department concentrated exclusively on transport-oriented objectives such as improving pedestrian safety and mobility, promoting walking as a mode of transport, discouraging access for non-essential vehicles, and improving the overall pedestrian environment. As other departments were minimally or not involved, the management problems that would arise in respect of street activities were not anticipated.

As a result of unresolved street management problems, there is less political support for pedestrianisation schemes. After an initial push in the early 2000s, pedestrianisation initiatives slowed. From 2000-2002, 3.7 kilometres of road were converted into full- and part-time pedestrian streets each year (see Figure 1), initially on a pilot basis. This dropped off rapidly in 2003-2004. Between 2005 and 2017, only 390 metres of road had been pedestrianised, 170 metres of which was due to the privatisation of Wan Chai’s Lee Tung Street by an Urban Renewal Authority redevelopment project. Legislative Council (LegCo) records indicate that by 2007, the Transport Department faced opposition from District Councils (DCs) to make pilot pedestrianisation schemes permanent due to concerns over street management problems such as the failure to regulate on-street promotional and advertising activities.

Some of the strongest opposition came from the Yau Tsim Mong DC due to the noise and nuisance complaints arising from the Sai Yeung Choi Street South pedestrian zone, and in 2013 the Yau Tsim Mong DC passed a motion to roll back its operation to weekends only.

Separately, pedestrianisation proposals by the Planning Department failed to garner support. In 2002 the Planning Department proposed to pedestrianise Kai Chiu Road in Causeway Bay. In 2004, it also proposed turning the southern end of Nathan Road between Middle Road and Haiphong Road in Tsim Sha Tsui into a civic square. Despite a strong favourable response during public consultation, the former project was stymied.

**Figure 1**

<table>
<thead>
<tr>
<th>Year (2000-2017)</th>
<th>Full-time pedestrianisation scheme</th>
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</tr>
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<tbody>
<tr>
<td>2000</td>
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<td>2001</td>
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<tr>
<td>2017</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Transport Department
by technical difficulties and eventually came to be opposed by members of the Wan Chai DC, including the representative for Causeway Bay (see Case Study 1 on backlash against pedestrianisation). The Planning Department received deeply divided views on the latter, with some opponents worried that it would attract nuisance-causing commercial booths and even vice. Government efforts to improve walkability and the pedestrian realm must take street management policy into consideration if they are to succeed.

1.3 The objectives of street management

Due to Hong Kong’s high urban density and intense mix of land uses, streets are used for a multitude of activities which can cause conflicts between different users, residents and businesses. Effective street management is a balancing act to enable people to use and enjoy public space without being excessively hampered by either competing users or micromanagement. Where that balance is will depend on the character of the location and the values and preferences of the community.

Street management should foster activities that enhance the enjoyment of public space and enrich the quality of life. Activities such as busking and hawking, if appropriately managed, can be welcome elements of a city’s character. Successful management includes, but should not be limited to, the prevention of nuisances. The Development Bureau’s “Hong Kong 2030+” strategy includes the goal of enhancing the uniqueness, diversity and vibrancy of Hong Kong’s districts and streets, and calls for a “review of policies, design, guidance, provision and management of public spaces (including streets and other pedestrian passageways) for better public enjoyment”.

Despite these high-minded ideals, however, there are existing hurdles to effective street management within the administration that ought to be addressed as the starting point.

1.4 Lack of comprehensive street management

Given the sheer variety of activities that take place in streets, it is unsurprising that there is no cohesive regulatory regime to manage them. The regulation of pedestrianised areas is scattered and piecemeal, often dependent upon different governmental departments for enforcement based on different but overlapping statutes.

While the Transport Department may, according to the Road Traffic Ordinance, create pedestrianised zones by “prohibiting absolutely or during specified hours the driving of specified types or classes of vehicle and the manner in which motor vehicles of any type of class may be used”, afterwards the Transport Department has no responsibility for managing the activities which take place beyond setting requirements for traffic circulation.
### Abbreviation, Full name, Areas of responsibility

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full name</th>
<th>Areas of responsibility</th>
</tr>
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<tbody>
<tr>
<td>EPD</td>
<td>Environmental Protection Department</td>
<td>Fly-tipping (construction waste)</td>
</tr>
<tr>
<td>FEHD</td>
<td>Food and Environmental Hygiene Department</td>
<td>Public hygiene, food safety, hawker control, obstruction, waste management (municipal waste)</td>
</tr>
<tr>
<td>HAD</td>
<td>Home Affairs Department</td>
<td>Interdepartmental co-ordination, district administration</td>
</tr>
<tr>
<td>HYD</td>
<td>Highways Department</td>
<td>Maintenance of infrastructure and street furniture, removing illegally dumped construction waste from roads</td>
</tr>
<tr>
<td>HKPF</td>
<td>Hong Kong Police Force</td>
<td>Public safety, traffic control, street obstruction, noise complaints</td>
</tr>
<tr>
<td>LandsD</td>
<td>Lands Department</td>
<td>Illegal occupation of government land</td>
</tr>
<tr>
<td>SWD</td>
<td>Social Welfare Department</td>
<td>Authorisation of charitable collection activities</td>
</tr>
<tr>
<td>TD</td>
<td>Transport Department</td>
<td>Traffic management and regulation, creation of pedestrian zones</td>
</tr>
<tr>
<td>BD</td>
<td>Buildings Department</td>
<td>Illegal structures</td>
</tr>
</tbody>
</table>

Figure 2 below sets out eight government departments that play a role in managing street activities (the list is not exhaustive; other departments may play a peripheral role). Some areas of enforcement are very strictly and perhaps overly regulated, while others are not at all. Where there are gaps, there may be vague and general statutory provisions that may serve as a fallback position, which are generally ineffective.

At an administrative level, handling many street management problems requires complicated interdepartmental efforts and cumbersome bureaucratic procedures. This is inefficient and resource-intensive, while often failing to ameliorate the situation in the long term.

### 1.5 Challenges in interdepartmental co-ordination

In practice, many common street management issues do not fall within the jurisdiction of a single department, making interdepartmental cooperation necessary for the management of pedestrianised areas and pavements. However, silos in government policy and administration are significant obstacles to addressing issues in street management. Government departments derive their authority from different pieces of empowering legislation, policies, and principles, and are often reluctant to take on responsibilities outside of what they perceive their core purpose to be. However, street management problems are frequently peripheral to their main focus and fall through the cracks. Where government departments are required to work together, their respective responsibilities must first be spelled out in detail.
For example, the Food and Environmental Hygiene Department (FEHD) handles shopfront extensions on the pavement, but if an extension is on the road, it becomes the Hong Kong Police Force’s (HKPF’s) responsibility where it endangers traffic safety. In this regard, the jurisdiction of the FEHD and police only extend to shop merchandise or restaurant tables; if built structures such as platforms and awnings form part of the extension, these will fall within the purview of the Lands Department (LandsD) if they are free-standing, or the Buildings Department (BD) if attached to a building. Thus, apparently simple cases such as shopfront extensions can involve several departments. Joint operations may be difficult to organise as they depend on the availability and resources of the relevant departments, and as a result may not occur frequently enough to be effective.

Areas of ambiguous jurisdiction may also prove difficult to resolve. Previously, no government department would accept responsibility for clearing abandoned bicycles from covered public transport interchanges, which are located on private property but managed by the Transport Department. LandsD’s position was that it had no jurisdiction over private property, whilst the Transport Department’s position was that it was not authorised to remove bicycles under its empowering legislation, and the FEHD’s position was that it could not dispose of functioning bicycles as waste. In one complaint received by the Office of the Ombudsman, it took 18 months, from December 2007 to April/May 2009 for a District Officer to persuade various government departments to carry out a joint operation to remove bicycles from a particular public transport interchange, during which time the Transport Department repeatedly declined responsibility. The Ombudsman substantiated the complaint against the Transport Department, which has since accepted the responsibility for clearing abandoned bicycles from its public transport interchanges. Areas of ambiguous jurisdiction may also prove difficult to resolve. Previously,
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1.6 Challenges in district administration in Hong Kong

On a day-to-day basis, the district administration system is responsible for handling problems on the ground and responding to local demands or complaints. The district administration system is composed of Hong Kong’s 18 elected DCs working in conjunction with their respective District Officers through District Management Committees. District Officers under the HAD are responsible for coordinating different government departments across jurisdictional lines.

Beyond the regulatory and interdepartmental problems previously described, the district administration system also operates under significant institutional constraints, which hampers the role it may play in street management.

1.6.1 Constraints of District Councils

DCs are vested with limited authority. Their main role is to advise the Government on district matters including community well-being, public facilities and services, and government programmes. Solid decision-making power is largely limited to organising community events and funding minor works. They have no actual supervisory or regulatory authority over activities that occur in their districts, including in pedestrianised areas.

While government departments are required to consult DCs on the implementation of policies, programmes and works, they are not obligated to follow their advice. As a result, government departments are not always responsive to local needs as represented by the DCs.

Some of the longest-serving District Councillors interviewed as part of this study felt that the role of local elected government had diminished since the abolition of the Urban and Regional Councils in 1999, which previously had full executive authority over a portfolio of municipal services including hygiene, sanitation, hawker control and recreation.

Ada Wong, who served in the Urban Council and subsequently the Wan Chai DC from 1995 to 2008, opined that the lack of real responsibility vested in DCs currently has promoted a “not in my backyard” attitude, whereby district councillors exercise what little influence they have by opposing any initiatives that might attract complaint. This does not foster a political environment open to experimentation or innovation.
1.6.2 Constraints faced by District Officers and District Management Committees

District Officers are responsible for coordinating the delivery of government services to meet district needs. In doing so, they must juggle the needs of multiple parties. According to Central and Western District Officer Susanne Wong, her job involves liaising with community representatives and stakeholders (including the District Council, homeowner’s corporations, district organisations, schools, NGOs, businesses, utilities, transport operators, the Urban Renewal Authority) while working with other government departments to provide local advice on the implementation of government initiatives. District Officers look for solutions that are acceptable to local stakeholders as well as assist government departments in soliciting local support for policies.

When different parties’ aims conflict, they must find compromises – for example, Ms. B, a former civil servant in a New Territories District Office noted that her department could not ask the FEHD to strictly enforce laws against unauthorised outdoor dining in her district without provoking strong objections from restauranteurs, and so had to employ softer methods of persuasion and education to encourage compliance with regulations.

While well-positioned to find practical solutions at the local level, the role of District Officers is also subject to certain constraints. As coordinators, they do not have final say over other departments which have actual enforcement and implementation power. While District Officers may use their coordination role to proactively discuss and address tricky issues that fall between jurisdictional lines, they cannot compel other departments carry out local demands.

The district branches of each government department report to their own department heads under their own bureaux and are responsible for carrying out their own policies and priorities. According to Ms. C, another civil servant at an urban district office, the frequency of interdepartmental joint operations organised by her office is constrained by the availability of other departments’ time and resources. In some cases, departments will not fulfil district demands that conflict with their priorities or which have territory-wide implications. Even where a DMC provides resources, it may not secure the desired outcomes from government departments if the problem is seen as low priority. In one case, a DMC allocated resources to LandsD under the District-led Action Scheme to remove shopfront platforms. The DMC targeted two or three streets that year, but during that time, LandsD failed to remove any platforms elsewhere in the district, as they were outside the target scope.

Additionally, the District Officers operate under a centralised administrative system which allows for some flexibility in local policy implementation, but which does not provide much scope for local decision-making. District Officers operate within the framework of existing policies, laws, and regulations which can act as constraints if they are overly prescriptive, outdated, or inadequate to address local circumstances. In such cases, their tools are limited to temporary mitigation of problems, such as organising periodic joint operations to remove abandoned bicycles from public transport interchanges. Long-term solutions addressing underlying problems must come from the bureau level while regulatory amendments must be approved by LegCo.
Within these constraints, effective leadership can make a difference. Individuals have varying levels of familiarity with district conditions or motivation to deal with complicated problems. Particularly effective District Officers may be more skilled at negotiating with stakeholders, navigating the bureaucracy, motivating other departments and finding practical workarounds. They may also find more effective ways to make use of existing administrative tools. For example, the Central and Western District Office uses the bi-monthly DMC meetings to keep track of progress on every single issue, both large and small, raised by District Council members or the District Officer herself so that all the relevant government departments can address them in a coordinated fashion. Susanne Wong reported that this has enabled them to successfully resolve 95% of the issues on the list. However, with some exceptions, the tenure of District Officers is relatively short as they are generalist administrative officers who are reassigned to different departments every few years.

1.7 Sub-optimal outcomes

Due to the regulatory fragmentation and institutional constraints described above, Hong Kong has not been very successful in managing streets to create a positive environment for pedestrians. There is an absence of effective frameworks for encouraging and managing desirable activities, as well as limited effectiveness in managing spillover effects and preventing nuisances.

Some of the results of ineffective street management include the appropriation of public space by commercial users (some of which add little to the pedestrian experience); inadequate control of illegal waste dumping; and the obstruction of pavements by advertising materials, goods and equipment.

Activities that could enhance the street environment, such as street performance and outdoor dining, have not been appropriately managed such that their spillover effects have sometimes had severe impacts on nearby residents and businesses.

There are also other activities, such as hawking, which are controlled by now-outdated regulatory regimes which no longer meet current community aspirations but nevertheless remain the focus of much Government attention and resources.

These and other problems will be analysed in this report in order to identify possible solutions and promote discussion of more productive ways to manage streets.
1.8 Street activities classification

The starting point of this study was to identify the types of activities that are carried out in pedestrian areas other than walking. These activities were identified by way of site visits and reinforced through interviews subsequently conducted with stakeholders. The study then separated the street activities, which occur in pedestrianised areas and on pavements, into six main types:

1. Political
2. Charitable
3. Servicing
4. Shopfront extension
5. Itinerant commercial activities
6. Artistic/Recreational

According to urban designer Jan Gehl, activities in public spaces may be categorised as necessary, optional or social. Most pedestrian spaces in Hong Kong are planned with only necessary activities – walking for transportation – in mind. However, as pedestrian space expands, so does the scope for non-necessary activities. Most of the six activities named above, except servicing and some types of commercial activities, are optional or social. This study therefore devotes explicit attention to these activities in order to examine existing management measures and to consider how they may be improved.

1.9 Study objectives and methodology

This study used a two-pronged approach – the first consisted of a desktop research exercise examining the policies, laws, regulations, and administrative procedures that regulate each of the six areas of activity. Where there was no direct regulation, general offences were examined for potential applicability to the activities. This study was then supplemented by a review of policy documents, LegCo and DC records, and media reports.

The second, parallel part of this study consisted of interviews with parties with direct knowledge of how existing street management regulations and policies were being implemented on the front line. These included primarily District Councillors and current and former civil servants in relevant government departments. Interviewees could speak
on the record or anonymously – where interviewees chose to remain anonymous, their comments are identified as “Mr. A”, “Ms. B”, etc. Some of their personal details were also changed to protect their privacy. Interviewees are listed in Appendix 2. These face-to-face interviews were then supplemented by written queries submitted to relevant government departments, including the FEHD, HKPF, HAD and LandsD.

Sections 2-7 of this report will cover each of the six types of street activity. Each section will describe and explain the relevant policies, rules, and practices, as well as the responsible government departments. This will be followed by a discussion of the practical problems of managing the activity on the ground in order to reveal misplaced priorities, regulatory loopholes, and inconsistencies in enforcement.

Section 8 will set out possible ways forward by way of policy recommendations to address the problems explained in the previous sections, including administrative solutions, legislative amendments, and new legislation. It will also outline issues for further community discussion. Additionally, within this review of the regulation and enforcement of street activities in pedestrianised areas, seven case studies were also carried out. The case studies are interspersed throughout the report in order to highlight issues of special local significance.
CASE STUDY 1

Causeway Bay
Backlash against pedestrianisation

Causeway Bay provides an example of how ongoing street management problems have soured political support for pedestrianisation schemes, as previously mentioned in Section 1.2. Causeway Bay has three full-time pedestrianised zones (including Jardine’s Bazaar) and two part-time pedestrianised zones. As the character and environment of these pedestrian zones are similar to Mong Kok’s, the Wan Chai District Council has been concerned with preventing the noise and nuisance problems found in Mong Kok (see Case Study 6) from being replicated there.

In fact, Causeway Bay’s two smaller part-time pedestrian zones are usually much calmer, perhaps due their more scattered layout. This appears to disperse rather than concentrate pedestrian flow so that these spaces do not attract as many street performers, thereby avoiding the problem of multiple performers competing to be heard in the same space. Yolanda Ng, the Wan Chai District Councillor representing Causeway Bay, reports that she has had some success in persuading performers to voluntarily lower their volume, while similar efforts in Mong Kok failed.

The most significant problems are caused by clashing political demonstrators (usually the Falun Gong and pro-Beijing groups) and the occupation of space by commercial promoters. In Ng’s view, the latter in particular have appropriated much of the space that is intended for the public to enjoy, thereby distorting the purpose of the pedestrianisation policy. Nevertheless, while Ng supports local culture and vibrancy, she is committed to preventing Causeway

FIGURE 5 Map of pedestrian schemes in Causeway Bay

Source: Transport Department, 2013
Bay from becoming another Mong Kok. She therefore opposed the proposed pedestrianisation of Kai Chiu Road, which lies between the existing Lee Garden Road/Pak Sha Road part-time pedestrian zone and the Jardine’s Crescent market (see Figure 5 for a map of this area and Figures 6 and 7 for photos).

“When the Transport Department proposed to pedestrianise Kai Chiu Road, it did not communicate with stakeholders.” Yolanda Ng, Wan Chai District Councillor

Fellow Wan Chai District Councillor Kenny Lee added that the developers who own large commercial properties in Causeway Bay and major chain retailers also have a strong vested interest in preventing street management problems. In particular, Lee added that Causeway Bay stakeholders would not want to the type of “lower class” amateur street performers found in Mong Kok to appear in her district and would register complaints to the Government and the Police if they did.

In light of a lack of clear solutions for ongoing street management problems, risk-averse District Councillors and other community leaders have little incentive to support pedestrianisation.

**Figure 6, 7** Causeway Bay’s pedestrian zone on Lee Garden Road/Pak Sha Road

The part-time pedestrian zone on Lee Garden Road is a popular spot for licensed itinerant hawkers. Photo Credit: Carine Lai

Few pedestrians are seen on Pak Sha Road on a Friday night. Photo credit: Carine Lai
MANAGING POLITICAL ACTIVITIES

2.1 Street-based political activities

From LegCo campaigning to the annual 1 July marches to Occupy Central, Hong Kong has a long tradition of street-based political activities. The creation of pedestrian zones essentially created more public space in which political expression takes place on an ad hoc basis. Visitors to pedestrian zones especially in Mong Kok and Causeway Bay frequently see political demonstrations, social issue campaigns, and rallies. Legislators and District Councillors also frequently use these zones for election campaigning, political fundraising, constituent outreach, and other activities.

Freedom of expression is protected under Article 27 of the Basic Law of the Hong Kong Special Administrative Region, as well as Article 16 of the Bill of Rights. Furthermore, freedom of assembly is also protected under Article 27 of the Basic Law, and Article 17 of the Bill of Rights.

These rights, however, are subject to the principle of proportionality – they may be subject to restrictions that are proportionate to the pursuit of legitimate aims, and may not be applied in a way that would impair the essence of those rights.

It was held in *Leung Kwok Hung & Ors v HKSAR* by the Court of Final Appeal of Hong Kong that the restrictions on the right to peaceful assembly in the Public Order Ordinance for the purposes of public order satisfied this requirement of proportionality, and are therefore constitutional.

2.2 Political demonstrations

2.2.1 Requirement of police notification

Part 3 of the Public Order Ordinance provides for the control of meetings, processions, and gatherings. Organisers of public meetings with more than 50 participants in public places and public processions with more than 30 participants must notify the Commissioner of Police of such meetings or processions and obtain a “letter of no objection”, as well as adhere to any requirements and conditions imposed by the Police.
However, requirements to notify the Police in advance of political protests do not apply to demonstration activities that fall outside of the definitions of public meetings and public processions. These may include gatherings under the minimum numbers of people under the aforementioned definitions, but may still be sufficiently significant to constitute an impediment to other pedestrians.

### 2.2.2 Confrontations with demonstrators

The aforementioned police notification requirements also do not take into account the tendency for demonstrations to be met with counter-demonstrations – which may push the combined numbers above the statutory minimum.

Where such processions or meetings escalate to physical confrontations, a number of offences under the Offences Against The Person Ordinance may be committed, including assault occasioning actual bodily harm or common assault.

Some demonstrators, such as the Falun Gong, maintain a long-term presence in pedestrian zones in Mong Kok and Causeway Bay, as well as areas with high pedestrian traffic such as the Star Ferry terminal in Tsim Sha Tsui. Such small-scale demonstrations may not in and of themselves cause management issues, but since 2012, there have been clashes between the Falun Gong and pro-Beijing activist groups. Similarly, reflecting deepening political divides in Hong Kong, recent years have seen physical confrontation between pro-Beijing groups and localists at demonstrations. It is worth noting that not all physical confrontations in pedestrianised zones are political in nature – there are also turf disputes between street performers, hawkers and commercial promoters, not to mention ordinary conflicts involving drunkenness, people bumping into or staring at each other, and fights over romantic partners.
In a written response, the Hong Kong Police stated that the biggest demands placed on manpower by street altercations are the reinforcements needed to separate multiple assailants as well as to control curious onlookers. It is for these reasons that Mr. A, a former police officer, was not supportive of pedestrian zones in principle. He was not concerned only about the demands placed on police time and manpower but about the general difficulty of maintaining public order and safety. He felt that there are more manageable ways to provide space for cultural vibrancy, such as holding fairs and bazaars in parks. While he emphasised that his personal views did not represent those of the Police Force, they may be indicative of commonly held attitudes towards pedestrianisation schemes within law enforcement.

2.2.3 Further impact of political demonstrations on pedestrianisation
Another consequence of these confrontations on pedestrianisation is their impact in discouraging other people and groups from using pedestrianised zones. Causeway Bay District Councillor Yolanda Ng noted that disputes between the Falun Gong and groups opposed to their demonstrations had this effect in Causeway Bay.

Another complaint that people may make about political demonstrations concerns the materials demonstrators may display. The Police, for example, have received complaints about the gruesome nature of some of the Falun Gong’s displays and re-enactments of human dissection. However, the display of indecent articles or objectionable performances is rarely prosecuted due to freedom of speech considerations.

**Figure 9** Problems concerning political protest

<table>
<thead>
<tr>
<th>Political Protest</th>
<th>Problem</th>
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<tr>
<td>Regulated under</td>
<td></td>
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</tbody>
</table>
| Public Order Ordinance  
Part 3: Permits for public meetings, possessions and gatherings  
HKPF | - No regulation of protests under minimum number of participants  
- Possible chilling effect on large non-political public gatherings |
| Balanced by       |         |
| Basic Law  
Article 27: Freedom of speech and association  
Bill of Rights  
Article 16 & 17: Freedom of expression and peaceful assembly | |
| Offence Against the Person Ordinance | - physical confrontation |
2.3 Electioneering activities

In addition to political demonstrations, political expression also includes electioneering activities and campaign activities outside of election periods (e.g. petition drives). For these activities, it is an offence to occupy unleased government land without a licence or deed under Section 6 of the Land (Miscellaneous Provisions) Ordinance. Land licences must therefore be sought from the Director of Lands (except in the case of Housing Authority estates) under Section 5 and the Schedule to the Ordinance. Such land licences are also issued for other purposes, such as outdoor seating accommodation, outdoor building maintenance works, and slope maintenance works. Guidelines have been issued by Lands in respect of LegCo electioneering.

2.4 Addressing street management problems caused by political activities

Obstructions or clashes as a result of small-scale political protest are a periodic rather than an ongoing problem; their frequency and severity depend on the prevailing political climate. They are manifestations of deeper political and social divisions in society.

For this reason, street management may not be the appropriate lens through which to view or address these problems. It is unlikely that public political disputes can be effectively addressed through additional restrictions on political protest. New legislative requirements in respect of political activities may run afoul of the provisions of the Basic Law guaranteeing freedom of expression and assembly.

Indeed, the existing requirements for police notification for public gatherings and processions were highly controversial when first enacted in 1997. While the requirements are normally not applied to non-political gatherings such as festivals and concerts, the language of the Ordinance is broad and could potentially be used to prohibit any type of large gathering which the Government deems contrary to public order, public safety, national security, or the rights of others. This may have a chilling effect on those wishing to organise cultural street events of a more spontaneous nature, such as flash mobs or participatory performance art.
3.1 Street-based charitable activities

Charitable fundraising events frequently take place on the streets as well as other public spaces. Common activities include flag-selling days, volunteers with donation boxes, and selling of items where the proceeds go to charity. Included in this section for discussion is begging, which also takes place on the streets and in other public spaces, but is a criminal offence.

**Figure 10** Statutes and subsidiary legislation that regulate charitable activities

- **Charitable Activities**
  - Authorised fundraising
    - Cap 28 Land (Miscellaneous Provisions Ordinance) s6: Occupation of government land LandsD
    - Cap 148 Gambling Ordinance s22: Licensing for raffles and games with prizes HAD
  - Begging
    - Cap 228 Summary Offences Ordinance s4(17): Permit for collecting donations in public SWD, HAD
    - Cap 228 Summary Offences Ordinance s26A: Begging in public places HKPF
    - Cap 132AI Hawker Regulation s10: Temporary hawking license for charity sale FEHD
3.1.1 Flag days and other charitable fundraising
In order to conduct flag days\(^9\) and other charitable fundraising activities on the street,\(^5\) organisers must obtain approval from the Social Welfare Department (SWD)\(^9\) under Section 4(17)(i) of the Summary Offences Ordinance.\(^9\) Fundraising activities for non-charitable purposes are similarly approved under Section 4(17)(ii) of the Summary Offences Ordinance.

3.1.2 Selling for non-profit purposes
Where the fundraising activities involve the selling of items on-street, organisers must obtain a temporary hawking license from the FEHD under the Section 10 of the Hawker Regulation.\(^9\),\(^9\) It is an offence under Section 83B of the Public Health and Municipal Services Ordinance\(^9\) to engage in hawking activities without a licence.

3.1.3 Fundraising by way of lottery
Fundraising activities that involve lotteries such as raffles must be licensed by the HAD under the Gambling Ordinance, whether they occur on the street or not.\(^9\) Section 4 of the Gambling Ordinance sets out a prohibition against lotteries, but carves out an exception for lotteries under the Betting Duty Ordinance,\(^9\) Government Lotteries Ordinance,\(^9\) and those licensed under Section 22 of the Gambling Ordinance. Under Section 22(1)(a)(i), a public officer appointed by the Secretary for Home Affairs may authorise by licence “the promotion and conduct of any lottery for the purposes of a club, association or other body of persons approved (by the public officer)”.

3.1.4 Occupation of government land
If any of the aforementioned activities – fundraising, selling, holding raffles, or any other charitable promotion activities – requires a table, booth, or stand-up banner to be placed on government land, non-profit organisations must also seek a letter of no objection from the Director of Lands under Section 5 of the Land (Miscellaneous Provisions) Ordinance in addition to any other necessary permits or licenses.\(^9\)

![Charitable sale booth](Photo credit: Carine Lai)
3.1.5 Impact of charitable activities on pedestrianisation

Bodies such as the Law Reform Commission have previously criticised the regulatory regime for charities in Hong Kong and called for a comprehensive charities law to prevent fundraising by fraudulent organisations. From a pedestrianised zone-management perspective, however, charitable activities have a limited impact as the disruption they cause is minor.101

3.2 Begging

It is worth mentioning here that under Section 26A of the Summary Offences Ordinance102 “Any person who wanders abroad, or places himself or herself in any public place, street or waterway to beg or gather alms, or causes or procures or encourages any child or children so to do” commits an offence.

In contrast with charitable activities, the impact of begging on pedestrianised zones is somewhat greater. District and Legislative Councillors have long complained about beggars, and persons posing as monks thought to be working for Mainland crime syndicates.103 Over 400 beggars from the Mainland were arrested between 2011 and 2015, 70% of whom were prosecuted.104

In recent years, there has been a rise in the phenomenon of “beg-packing” in areas such as Mong Kok and Central – whereby overseas tourists attempt to busk, sell trinkets, or beg to raise money for their travels.105
3.2.1 Blurred line between busking and begging

Law enforcement officials have not always clearly distinguished between street performances and begging. Mr. A, the former police officer, expressed concern over the fact that busking is legal while begging is not, but that it was not always easy for frontline officers to draw a clear line between the two (e.g. musicians of limited skill who seek to solicit sympathy from passers-by). During former Wan Chai District Councillor Ada Wong’s term in office (2000-2008), the Council proposed to set up a busking scheme in the pedestrianised zone in East Point Road/Lockhart Road. However, the district police commander at the time opposed the idea on the grounds that it would be an endorsement of activities similar to begging.107

3.3 Addressing street management problems caused by charitable activities and begging

In general, street management problems associated with charitable fundraising activities are relatively minor and unlikely to need regulatory remedies. Compared to other cities, begging is also a relatively minor issue in Hong Kong, and strong indiscriminate enforcement against it would mean arresting people for being poor. The existing level of enforcement focusing on fraudulent monks and begging syndicates is adequate. The unclear demarcation between begging and busking may be resolved through clearer management of street performance, an issue that will be addressed in Section 7. ■
MANAGING SERVICING ACTIVITIES

4.1 Description of servicing activities

Servicing activities are the street activities that are necessary to support the land uses and activities in the surrounding buildings. This includes services such as passenger pick-ups and drop-offs, loading and unloading of goods, car parking, temporary storage, and waste removal.

Pedestrianising streets or widening the pavement has an impact on servicing activities for the surrounding buildings. In order to create space for pedestrians, vehicular access has to be blocked, limited or discouraged. This affects car parking, goods delivery and waste removal arrangements in the surrounding buildings. Street cleaning activities may also be affected. The effective management of servicing activities is therefore important to the success of pedestrianisation efforts.

4.2 Vehicular access, parking, loading and unloading of goods

While vehicular access, parking, and loading and unloading of goods are primarily traffic management issues, they do affect the pedestrian environment. Pavements are obstructed by on-street loading and unloading activities, while on-street parking (especially double parking) can make it more difficult for pedestrians to cross the road by blocking sightlines. These activities also contribute to traffic congestion, which in turn exacerbates roadside emissions. These problems were mentioned by several District Councillors interviewed who represented heavily built-up urban areas like Central and Western, Sham Shui Po, and Mong Kok.

The Road Traffic (Traffic Control) Regulations\textsuperscript{108} give the Commissioner for Transport the power to place traffic signs, road markings, traffic lights, pedestrian crossings, and pedestrian priority zones. It also grants the Commissioner the power to close roads to all or any particular type of traffic, providing the means for creating pedestrian zones. The Transport Commissioner may also designate prohibited and restricted zones that prohibit vehicles from driving there or stopping to load/unload goods or passengers on certain days or certain times of day.
While Sections 11 and 12 of the Road Traffic Ordinance empower the Transport Department to make regulations for road traffic and parking, they are generally enforced by the Hong Kong Police, particularly traffic and parking offences.

Parking is separately regulated under the Road Traffic (Parking) Regulations, which provides for general restrictions on parking, parking meters and pay-and-display machines, and car parks and defines a number of offences related to these different requirements. Further traffic and parking offences may be found in the Fixed Penalty (Traffic Contraventions) Ordinance and the Fixed Penalty (Criminal Proceedings) Ordinance. These provisions are also used to address offences that occur in the loading and unloading of goods, as was noted by the Transport Advisory Committee.
The aforementioned regulations are therefore quite comprehensive in terms of the tools provided to the Transport Department to regulate vehicle access, parking, stopping, loading, and unloading. It is the lack of space for such activities that makes it challenging to manage them smoothly. The Planning Department’s Planning Standards and Guidelines espouse the policy that “parking and loading/unloading should be provided off-street as far as possible”. However, these guidelines can only be implemented upon the redevelopment of urban lots, hence off-street facilities are scarce in older parts of the city. The situation has been exacerbated by the rapid growth in licensed vehicles, which rose from 552,980 in 2006 to 745,677 by the end of 2016.

The Transport Department currently attempts to stagger traffic by prohibiting unloading (or otherwise stopping) at peak hours. For example, on Caine Road, Central, stopping in loading zones is prohibited e.g. from 8 a.m. to 10 a.m. and 5 p.m. to 7 p.m. However, it is challenging to implement these methods more extensively as it is impractical for many businesses to receive deliveries after working hours. In the Central Business District, deliveries of bottled water and paper to offices during the day often occupy areas of pavement.

Pedestrian environment improvement works are sometimes opposed by local stakeholders concerned about disruption to their servicing activities. Wan Chai District Councillor Kenny Lee gave an example in which two shopkeepers opposed a pavement-widening scheme because narrowing the carriageway would inconvenience their goods-unloading operations. Lee believes that the only way the proposed plans for pedestrianisation in Wan Chai can be realised is if the entire neighbourhood is redeveloped so that off-street facilities are provided for servicing activities and the affected commercial properties are placed under unified private management, as in the case of Lee Tung Street, which was redeveloped by the Urban Renewal Authority. However, such schemes do not necessarily foster urban vibrancy as they tend to replace small independent businesses with chain stores.
4.3 Obstruction of pavement by temporary storage

A further potential impediment to pedestrian mobility is the use of pavement for temporary storage of goods and equipment. Many businesses, facing high rents, extend their working areas out onto the pavement or street, which enables them to stay competitive. However, such activities cause clutter which may obstruct other street users, and if such materials are left on the pavement for long periods of time, it may constitute obstruction of a public place or illegal occupation of government land.118

Interviewees from several districts identified recycling and courier businesses as persistent causes of obstruction, as they use the pavement and roads to store, sort, or process their goods. Businesses, delivery persons, and waste collectors also often leave equipment such as trolleys, ladders, bicycles, gas canisters, storage bins, recyclable waste, and other items on the street or pavement instead of storing such materials on shop premises. These can often be found chained to railings.

Activities on the pavement are not governed by traffic regulations, but by laws on the obstruction of public places, the obstruction of street cleaning, and the illegal occupation of government land. Unfortunately, these laws may not be particularly effective given the diverse types of activity that may take place on the pavement.
FIGURE 17 Recyclable cardboard awaiting pick-up

FIGURE 18 Storage cages and trolleys

FIGURE 19 Equipment and drying kitchen uniforms on the pavement
Objects other than merchandise fall into regulatory lacunae that are not covered by the current division of responsibilities within FEHD and between the FEHD and the Police. The FEHD’s Hawker Control Section, which is authorised to enforce Section 4A of the Summary Offences Ordinance against obstruction of public places, is frequently reluctant at the district level to handle cases that do not involve illegal hawking (i.e. selling things) even though they are legally authorised to do so. The FEHD’s Cleansing Section may enforce Section 22 of the Public Health and Municipal Services Ordinance against obstruction of street cleaning, but this only enables frontline workers to ask that objects be temporarily moved. Summonses can be issued only if people refuse to co-operate. While the Police can also enforce Section 4A of the Summary Offences Ordinance, outside of pre-arranged joint patrols with FEHD, they will only intervene when there is “an occurrence of crime of breach of peace, when there is an imminent danger posed to the public, or when there is serious disruption to traffic and other road users”.

Since 2016, HKD1,500 fixed penalty fines for obstruction of public places can be issued Cap 570 (the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance, but they can only be issued in unambiguous cases, which means they cannot be applied to objects whose owners cannot be clearly identified.

Continuing obstructions, particularly those involving free-standing built structures (e.g. platforms, tables, awnings) may be prosecuted for illegal occupation of government land under the Land (Miscellaneous Provisions) Ordinance. However, the enforcement mechanism is bureaucratically cumbersome.

“A lot of times [shop owners] will build a platform, or put shelves in front of their shops ... It usually takes a lot of effort for us to approach the government departments to follow up, because it requires certain procedures and policies for these departments to deal with these issues, for example, they may need to approach the shop owner, issue warnings, and can only take enforcement action after they ignore the requests. This might take 2-3 months to process. So when local residents complain why the problem still exists, it is because the government departments are already processing the complaints but the legal process is just too time-consuming.” – Chum Tak-Shing, Sham Shui Po District Councillor

Whenever the Lands Department seeks to have an object or structure removed from government land, it must post a 24- or 48-hour warning notice on said object. If it is moved before the end of the warning period, even by a few metres, a new warning period must begin. This mechanism effectively allows for continuous (i.e. semi-permanent) illegal occupation of government land. In a 2013 report on illegal restaurant extensions, the Office of the Ombudsman wrote, “We have doubts about Lands D’s interpretation of the law”. It explained, “We note that the notice issued under the above Ordinance clearly requires the occupant to ‘cease occupation’ of the land, not just to ‘temporarily remove’ the articles placed on the land. Accordingly, a notice posted should remain valid until the occupation substantively ceases.” This critique, however, has failed to result in a change in LandsD’s enforcement methods. This problem manifests repeatedly in different contexts – see Case Study 2 about illegally parked bicycles and Section 4.4.3 about construction skips.
Districts that are acutely affected by such obstructions on the pavement and in the road (e.g. streets with many recycling businesses) must therefore organise interdepartmental joint operations involving FEHD, the Police and LandsD. While effective in the short term, such operations are resource-intensive and cannot be carried out on a frequent basis in every blackspot.¹²⁵

This is the case in parts of Sham Shui Po, where second-hand appliance recyclers leave out piles of refrigerators, televisions, and washing machines. While such businesses are necessary to the processing of e-waste, residents have complained about stray pieces of scrap metal and leaking refrigerants. The authorities face additional difficulties in enforcement because business owners will deny responsibility for items found outside their premises on the grounds that they were placed there by independent scrap collectors.¹²⁶ While the FEHD may dispose of the materials as waste, this does not disincentivise the practice as it causes the recyclers little financial loss since the items were of low monetary value to begin with.¹²⁷
CASE STUDY 2

Yuen Long
Illegal bicycle parking

People use bicycles for transport in the New Territories, especially between public transport interchanges and home. The Government has committed to providing a bicycle-friendly environment in New Towns and New Development Areas. However, there are insufficient public and private bicycle parking facilities, resulting in widespread illegal parking. While it is necessary to tolerate it to an extent, there is a tendency for neglected and abandoned bicycles to accumulate outside of public transport interchanges and other destinations, obstructing pedestrians.

While bicycle parking is not the most urgent street management problem, it nevertheless illustrates problems concerning overlapping jurisdictions over unattended objects. Bicycles are considered vehicles under the Road Traffic Ordinance, but cannot be ticketed as such as they are not registered. While the Police can tow them, they prefer not to do so as they are rarely reclaimed by owners, the fines generally being more than the cost of replacement. The fallback mechanism is to confiscate them for illegal occupation of government land using the Land (Miscellaneous Provisions) Ordinance, a time-consuming process involving up to four government departments – LandsD, FEHD, the Police, as well as TD if it is necessary to close a public bicycle parking area in advance. As with the removal of all private property from government land, LandsD must affix a 24- or 48-hour notice to each bicycle and photograph it for record-keeping purposes before the FEHD may dispose of it as rubbish.

In the 12 months preceding October 2017, the Government conducted 458 such operations, confiscating 11,000 bicycles. District Councillor Zachary Wong thinks these operations are an inefficient use of resources, and inconvenience the
public by temporarily closing public bicycle parking areas, forcing people to park illegally. They also invariably result in the confiscation of bicycles that are still wanted.

In the past year, the bicycle parking problem has been exacerbated by the launch of dockless bike share companies including Gobee.bike in April 2017, followed by several competitors in the following months. Originating in Mainland China, dockless bike sharing has become a global phenomenon, creating regulatory challenges for city governments worldwide. Unlike older bicycle sharing services with established docking stations set up in partnership with city governments, dockless bicycles can be parked anywhere and are unlocked using a mobile app. While these services have the potential to encourage more cycling for first- and last-mile trips, they occupy scarce bicycle parking spots and contribute to street clutter if parked haphazardly. There have also been reports of theft and vandalism. Local bike share operators have engaged in dialogue with relevant government departments and have implemented voluntary incentive schemes to encourage responsible parking. As of yet, the Government is studying other cities’ policies and has not decided whether it is necessary to implement further regulatory measures.
4.4 Street cleaning and waste collection

The FEHD oversees the provision of cleaning services in Hong Kong, including street and gully cleansing, poster removal, waste collection and public refuse collection points, and conservancy services and cleansing of public toilets and bathhouses.

The provision of street cleansing services is supplemented by the public cleanliness offences of littering, spitting, and fouling of streets by dog excrement under the Public Cleansing and Prevention of Nuisances Regulation. These offences are generally enforced by the Police, but under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance, staff of the FEHD are also empowered to impose fixed penalties (HKD1,500) for such offences. Further offences that are considered nuisances committed in public places are provided for under Section 4 of the Summary Offences Ordinance, including throwing any filth, rubbish, or noisome or offensive matter on any public place or government property; spitting in a public place; and obeying calls of nature in public.

Waste disposal in Hong Kong is governed by the Waste Disposal Ordinance. Waste is classified under several categories, including municipal solid waste; construction waste; and special waste requiring separate treatment, including chemical waste, livestock waste, and even sewage. For the purposes of street management, municipal solid waste (what would generally be thought of as ‘rubbish’) and construction waste are of primary concern.

Part 4 of the Waste Disposal Ordinance provides for disposal of waste, including offence provisions for the unauthorised disposal of waste, the unlawful depositing of waste, and depositing of construction waste. Under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance, staff of the EPD are also empowered to impose fixed penalties for such offences.

While there is some overlap between the Public Cleansing and Prevention of Nuisances Regulation and the Waste Disposal Ordinance in the regulation of illegal waste disposal, in urban areas the FEHD enforces the former with regard to municipal solid waste, while the EPD enforces the latter, focusing on construction waste.

4.4.1 Illegal dumping of domestic and trade waste

The main problems in respect of the regulation of waste removal may be attributed to insufficient enforcement and lack of organisational capacity in waste removal operations. In old residential buildings without any management organisation (so-called “three-nil buildings”), residents must take their own household waste to nearby refuse collection points. Many instead improperly dispose of household waste in public rubbish bins. Street-level shops also make improper use of public waste collection facilities in order to save costs. The FEHD does not provide refuse collection services to commercial or industrial establishments. While shops usually have their waste taken to the nearest refuse collection point (which is also illegal if the volume exceeds 100 litres), those that stay open after refuse collection points close for the night often leave waste on the street or in alleys overnight. Businesses also rely on scavengers to remove recyclable packaging materials for free. For these purposes, they are stacked on the pavement. Certain black spots accumulate waste rapidly despite multiple rounds of cleaning by the FEHD each day.
Where waste collection services are contracted, the Public Cleansing and Prevention of Nuisances Regulation\(^{162}\) provides that rubbish should not be left at the kerb-side for more than 10 minutes,\(^{163}\) but as this presents logistical difficulties in single-block buildings without waste collection rooms, it is common for rubbish bags to sit on the kerb for hours, attracting pests.\(^{164}\)

Unfortunately, such illegal waste dumping practices may intensify with the planned introduction of municipal waste charging in 2019, which will affect households and street-level shops.\(^{165}\) More stringent monitoring mechanisms and incentives for co-operation will be necessary in order to mitigate evasion of waste charges. In late 2016, the FEHD set up Internet Protocol (IP) Cameras in several waste dumping black spots as part of a pilot scheme,\(^{166}\) which has shown early promise.\(^{167}\) However, without widespread coverage, people simply dumped waste elsewhere, creating new black spots.\(^{168}\) As of 2017, the Government is planning to extend the scheme to other black spots.\(^{169}\)
4.4.2 Fly-tipping of construction waste

Fly-tipping of construction waste by construction companies seeking to avoid mandatory landfill charges is also common. The landfill charge, which was implemented in 2005, resulted in an immediate increase in fly-tipping.

Although fly-tipping may be prosecuted under the Waste Disposal Ordinance, the EPD has limited enforcement capacity and has had difficulty gathering evidence and establishing culpability. In 2015, it began a surveillance camera trial scheme, but images resulted in prosecution in only 28% of the cases due to poor image quality and difficulty tracing culprits. Some vehicle owners could not be traced, some owners refused to identify the drivers, and some drivers denied responsibility by saying that they were following clients’ instructions, who in turn could not be traced. Under the Waste Disposal Ordinance, owners of vehicles used for fly-tipping cannot be prosecuted unless they themselves do the fly-tipping, a problematic lacuna in the statute.
### Problems concerning waste disposal

<table>
<thead>
<tr>
<th>Waste Disposal</th>
<th>Regulated under</th>
<th>Problem</th>
</tr>
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</table>
| Public Health and Municipal Services Ordinance | Public Cleaning and Prevention of Nuisances Regulation | • Lack of management to organise waste collection in older residential buildings  
• Lack of space for residential buildings and shops to store rubbish awaiting collection  
• Improper use of public rubbish bins and waste disposal facilities by street-level businesses |
| Fixed Penalty (Public Cleanliness and Obstruction Ordinance) | • Challenges in catching and identifying litterers and waste dumpers |
| Waste Disposal Ordinance | Illegal dumping | • Challenges in catching and identifying waste dumpers  
• Owners of vehicles used for fly-tipping may not be prosecuted |

#### 4.4.3 Roadside skips

Although the Government encourages the use of roadside skips in order to reduce construction waste dumping, the skips themselves may constitute dangerous obstructions. Between November 2009 and June 2013, the Police recorded 15 traffic accidents involving skips. A 2013 report by the Audit Commission found that voluntary safety guidelines issued by EPD and the Transport Department in 2008-9 are rarely followed.  

The difficulties in managing roadside skips are similar to those affecting other objects left on streets (see Section 4.3 on temporary storage and Case Study 2 on bicycle parking), but also illustrate particular jurisdictional lacunae. As they are not considered vehicles under the Road Traffic Ordinance or a type of waste under the Waste Disposal Ordinance, neither the Transport Department nor the Environmental Protection Department oversees them. The Police may prosecute skip owners for obstructing public places, but generally intervene only if they pose an immediate threat to road safety. The sole legal recourse is for LandsD to prosecute them under Section 6 of the Land (Miscellaneous) Ordinance for illegal occupation of government land.  

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After receiving a complaint, LandsD is supposed to investigate the site within 2 days and post the requisite 24- or 48-hour warning notice. If the object is not removed, it will be confiscated and the culprit will be prosecuted. However, LandsD can only undertake prosecution if there is “admissible, substantial and reliable evidence that an offence has been committed by an identifiable person,” meaning that if the culprit, who may not necessarily be the owner, must be identified.

**Figure 29** Construction waste skip

Unattended objects – temporary storage, bicycle parking and skips

<table>
<thead>
<tr>
<th>Regulated under</th>
<th>Problem</th>
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</table>
| **Summary Offences Ordinance**  
  s4A: Obstruction of public spaces  
  FEHD (Hawker Control), HKPF | • Low enforcement priority for Police unless traffic or pedestrian safety affected  
 • Objects other than shop merchandise inadequately addressed by FEHD due to bureaucratic silos |
| **Land (Miscellaneous Provisions) Ordinance**  
  s6: Unlawful occupation of government land  
  LandsD | • Inefficient enforcement procedure: warning period must be restarted if objects are moved  
 • Long investigation and prosecution times  
 • Prosecution not possible if culprit cannot be identified  
 • Collaboration between up to 4 departments needed to remove illegally parked bicycles |

Photo credit: Carine Lai
Due to jurisdictional disputes between TD and LandsD, in 2014 the Government declined to implement a permit system for roadside skips in 2014. In any case, the Development Bureau and LandsD decided that a permit system would be not be workable because if causing no obstruction were a condition of approval, no roadside skips would qualify by definition.

4.4.4 Addressing street management problems caused by servicing activities

Regarding vehicle access and parking, it appears that the problems are not due to inadequacy in the relevant statutes and regulations, but rather severe space competition, interest group lobbying, and inadequate enforcement. These problems cannot be resolved through regulatory reform but must be addressed through better urban planning and traffic management. One major obstacle is that the benefits of demand-side traffic management and improvements to the pedestrian environment are diffuse but the costs fall on specific stakeholders. This tends to reinforce the political will in favour of the status quo. In order to overcome this, the Government needs to improve its public engagement strategy and articulate the benefits of new urban planning and traffic management policies in order to build public support.

In contrast, problems associated with the temporary storage of various unattended objects in streets have very much to do with weaknesses in the current statutes and regulations. The Lands (Miscellaneous Provisions) Ordinance is used as a fallback mechanism but is unsuited to addressing transient occupation of government land. There may be a need to introduce specific regulations to address the most common objects, such as construction skips and parked bicycles.

Regarding waste collection, many of the problems are due to inadequate organisation and logistical support. There is a need to continue to improve building management, and there may also be scope for the Government to assist businesses in organising more efficient and effective waste collection. Such measures should go hand in hand with improving enforcement, where the Government has already taken steps through the use of CCTV cameras. One significant regulatory loophole is that vehicle owners cannot be prosecuted for fly-tipping. Amending the Waste Disposal Ordinance to address this gap would make enforcement against fly-tipping more effective.
5.1 Description of shopfront extensions

Businesses operating from fixed locations, i.e. brick-and-mortar shops and restaurants, sometimes extend their business activities into streets and pedestrian pathways. On one hand, these activities may sometimes be seen as desirable, by enhancing the vibrancy of the streetscape and fulfilling public demand for activities such as window shopping and outdoor dining. By creating an interesting urban environment, such activities may attract tourists and enhance local economies. However, such activities also create spillover effects such as impeding pedestrian mobility, generating litter, and causing noise nuisances. Currently, businesses that engage in these activities also pay little or nothing to use public space.

**FIGURE 31** Significant laws and regulations affecting shopfront extension

- **Cap 28 Land (Miscellaneous Provisions Ordinance)**
  - s6: Occupation of government land
- **Cap 132 Public Health and Municipal Services Ordinance**
  - s22: Obstruction of street cleaning
- **Cap 228 Summary Offences Ordinance**
  - s4A: Obstruction of public places
  - FEHD, HKPF
- **Cap 570 Fixed Penalty (Public Cleanliness and Obstruction) Ordinance**
  - Fixed penalty fines for obstruction of public places
  - FEHD, HKPF
- **Cap 132X Food Business Regulation**
  - s34C: Operating beyond confines of licensed food premises
  - FEHD
Although there is a great deal of overlap between shopfront extensions and restaurant extensions, regulators have historically dealt with the two separately, resulting in a patchwork of inconsistent rules. There are also gaps and inefficiencies in enforcement, leading to spotty compliance.

### 5.2 Shopfront extensions

The issue of shopfront extensions arises where shops and restaurants occupy public places outside of their premises to conduct business. In Hong Kong where rents are high, there is strong incentive to expand display space onto the pavement. While such displays can contribute to interactive and interesting streetscapes, where pavements are narrow or pedestrian flows are high, they may impede pedestrian mobility or cause pedestrian-vehicle conflicts by nudging pedestrians out into the road.

Under the current patchwork of laws, shopfront extensions can be found illegal for a variety of reasons. Under Section 4A of the Summary Offences Ordinance, it is an offence to cause an obstruction in a public place. Such offences are enforced by the FEHD and the Police. The FEHD also takes enforcement action against offences under Section 22 of the Public Health and Municipal Services Ordinance for the obstruction of cleansing operations, and Section 83B of the same Ordinance for illegal hawking where hawking activities take place beyond the confines of the relevant shop. When prosecuting shops for illegal hawking, the FEHD may confiscate the merchandise as well as issue summons. LandsD may take enforcement action under Section 6 of the Land (Miscellaneous Provisions) Ordinance for the offences of unlawful occupation of or unauthorised structures on unleased government land in front of shops. Similarly, BD may by notice under Section 24 of the Buildings Ordinance require the demolition or alteration of unauthorised works or erections extending shopfronts.

In 2016, to address the ineffectiveness of street obstruction prosecutions due to long lead times to trials generally resulting in light penalties, the Government amended the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance to place Section 4A of the Summary Offences Ordinance under its scope, thereby creating a HKD1,500 fixed penalty for causing obstructions in public places. The FEHD and the Police were both empowered to impose fixed penalties for this offence.

According to the HAD, enforcement against shopfront extensions is four-pronged in approach – enforcement of the law by the different government departments, as set out above; for more complex cases, joint operations led by District Officers; collaboration with DCs; and public education. While some exemptions are made on an ad-hoc basis (see below), there is no application system to authorise shopfront extensions where they may be appropriate.

#### 5.2.1 Arbitrary exemption policy

Unlike restaurants, which may obtain permission for outdoor extensions by application, there is no equivalent process for other retailers. Instead, there is an ad-hoc process whereby the HAD consults DCs and District Management Committees to identify and designate “tolerated areas” and “black spots”.
Shopfront extensions in tolerated areas are given allowances of 1-3 feet and assigned a lower enforcement priority. Their designation rests on the DMC’s judgment of “shops that constitute a distinct characteristics [sic] and contribute to the vibrancy of the district”. The most prominent example is Flower Market Road in Prince Edward, which is a major destination for local shoppers and tourists.

However, the criteria by which DMCs decide which streets warrant tolerance are unclear: other distinctive streets, e.g. Upper Lascar Row, which sells antiques, are not tolerated areas, while several ordinary suburban shopping streets are. Tolerated status may be rescinded during periodic reviews: the number of tolerated areas has declined from eight in 2014 to five in 2018.

The designation of black spots, which are singled out for more stringent enforcement, is likewise based on DMCs’ judgment of which areas suffer severe impacts on pedestrian safety, road access and environmental hygiene due to shopfront extensions. Curiously, different parts of the Prince Edward flower market appear on both lists. The arbitrary nature of this policy has attracted criticism and complaints of unfairness.

Figure 32
Prince Edward flower market

Flower shops facing Prince Edward Road reside within a designated “black spot”, but those on the opposite side of the block on Flower Market Road are in a “tolerated zone”. Shops in the tolerated zone are given a 3-foot allowance for shopfront extension. Photo credit: Carine Lai
Many cities have made rules to facilitate shopfront extensions and outdoor dining while maintaining pedestrian throughways in a systematic way. For example:

**NEW YORK CITY**

New York City allows shopfront merchandise displays in most areas as long as they do not extend more than three feet from the building line and are no more than five feet high. Certain streets have been designated “zero sidewalk display streets” due to congestion or narrow pavements. Other than permitted extensions, the city prohibits people from leaving any “box, barrel, bale of merchandise, or other movable property…regardless of ownership” on the street or pavement, and requires property owners and businesses to keep abutting pavements free of obstruction.

**LONDON**

In London, many boroughs allow businesses to obtain, for a fee, a “shop front license” to display merchandise on the pavement. License holders are required to display their licenses and they must be renewed at intervals (e.g. one year). While rules vary from borough to borough, they typically impose conditions on the goods that may be displayed (e.g. no alcoholic beverages), the size of displays, and minimum clearances for pedestrian passage. The process by which restaurants may obtain a “tables and chairs license” for outdoor seating is essentially the same, with additional requirements for maintaining cleanliness and the arrangement and overnight storage of furniture.

**TORONTO**

Since 2015, Toronto has been reviewing its policies for sidewalk cafes and shopfront extensions (“marketing displays”) with the goal of maintaining vibrant streets while improving pedestrian mobility. As part of this process, it is developing design guidelines that offer a range of outdoor café seating configurations suitable for different types of streets to give restaurants flexible options for meeting the 2.1m pedestrian clearance requirement.
5.2.2 Difficulties in enforcement

While many interviewees thought the new fixed penalties had helped to deter the extension of shopfronts, their application is subject to limitations as they can only be issued in unambiguous cases where none of the facts can be disputed. They cannot be applied to cases that involve ambiguity, including unattended objects of uncertain provenance, or merchandise disguised as goods in transit.

Additionally, silos within FEHD produce inefficiencies, with frequent debates between Hawker Control Teams and Cleansing Sections over which branch should handle a given obstruction. Some district-level administrators persist in using inefficient practices, e.g. sending the Cleansing Section to deal with shopfront extension complaints as a first resort even though they have weaker enforcement powers and less available manpower than the Hawker Control Section. According to Li Mei-siu, the FEHD union vice-chair, most of the management within FEHD are experts in food safety who have little familiarity with frontline implementation and enforcement. They are rotated every 2-3 years, which prevents long-term retention of learning and experience.

Enforcement effectiveness varies between districts not only due to administrative practices, but also because of cultural and normative differences on the ground. Enforcement officials need an intimate understanding of local conditions in order to be effective. Some neighbourhoods are more uncooperative or evasive (see Case Study 3), certain types of businesses depend more heavily on shopfront extension as a business model or are more willing to write off fines as a business cost, and some areas have a significant triad presence which renders Police reinforcement necessary.

Li also noted that FEHD officers find it difficult to do their jobs due to public pressure: as street obstruction is a minor offence, not only do they encounter backlash from retailers, but from consumers and District Councillors who feel that business owners are being unduly harassed, especially given high commercial rents. Resistance may occasionally take the form of physical intimidation.

Court decisions also affect enforcement – when the FEHD loses a case, its frontline workers are usually advised against pursuing similar cases so as not to waste effort in processing cases unlikely to succeed. These factors result in frequently shifting instructions that undermine public perception of the FEHD’s consistency and fairness, while discouraging frontline officers from prosecuting offenders to the fullest extent of the law.
Sham Shui Po
Evasive tactics in shopfront extension

Sham Shui Po is a densely built-up urban area and has the lowest median household income in Hong Kong, at HKD20,600 per month in 2016. It is also a vibrant and popular shopping district for specialised goods including electronics, wholesale fashion, and textiles. It is home to several outdoor street markets and two major indoor wet markets.

Sham Shui Po appears to have had less success controlling shopfront extensions than most other districts. On the HAD’s list of black spots, Sham Shui Po has the second highest number (7) after Yuen Long (12). District Councillor Chum Tak-shing describes a competitive situation in which shopkeepers, squeezed by high rents, feel compelled to occupy progressively more pavement space for fear of losing out to competitors.

He and fellow DC member Leung Yau-fong have made note of a number of tactics employed by shopkeepers to evade regulation. They place their goods on trolleys, so that when FEHD patrols arrive, the trolleys are wheeled onto the road in the pretense they are goods in transit, as the FEHD will not usually issue fixed penalty fines in such ambiguous cases. Ordinary summons may be issued instead, but as noted above, these tend to be ineffective due to the length of time needed to prosecute and light penalties.

A similar tactic commonly used by grocers is to keep vans permanently parked outside as storage units. The goods are gradually unloaded from the vehicle into the shop throughout the day. These vehicles take up loading zones and parking spaces for extended periods of time, which results in other vehicles double-parking and exacerbating traffic congestion.

These tactics seem to be especially common in Sham Shui Po, illustrating very specific local variations in responses to regulation. Between the introduction of the fixed penalty for shopfront extension in September 2016 and March 2017, the FEHD received 166 complaints about shops using roads or lay-bys for storage. Of those, 109 complaints were from Sham Shui Po District.

Photo credit: Carlo Chan

Figure 34  Grocer using a parked van as storage
5.3 Outdoor seating accommodation

Outdoor seating accommodations, whether in the form of waterfront seafood restaurants, dai pai dongs, or cafes, are a historically popular attraction in Hong Kong and an iconic, if fading, part of its urban landscape.

Ordinarily, however, they are illegal. In addition to being subject to the normal regulations governing shopfront extension, under Section 34C of the Food Business Regulation, food business licensees shall not carry on their business beyond the confines of their premises under licence. This is a criminal offence under Section 35 of the Regulation, and is enforced by health inspectors under the FEHD.

In order for a restaurant or other food business (other than dai pai dongs) to legally maintain outdoor seating accommodations, an application must be made to the FEHD, and fulfill the relevant requirements in respect of building safety, fire safety, traffic, environment, and most significantly, a land licence (for part-time non-exclusive use of government land where no structures are permitted) or short-term tenancy (for exclusive use of government land on a 24-hour basis with proposed structures) from LandsD.

In addition to fulfilling the above requirements, which are vetted by seven government departments including FEHD, applicants must go through a public consultation process which may include local DC members, area committee or village representatives.

This process has long been criticised by the restaurant industry for being protracted and complicated. In spite of some simplification of technical requirements in 2013 thanks to lobbying by the French and American Chambers of Commerce, the process remains slow and cumbersome. According to the FEHD, normal processing time in “simple and straightforward cases without public objections or complicated land issues” is 46 days, but any objections or complications may delay applications for months or years.

Not-in-my-backyard attitudes also discourage outdoor dining at a broader scale. In 2013-14, the FEHD consulted DCs on identifying suitable venues for outdoor dining, but the majority of DCs were opposed to it and advised that there were no suitable areas in their districts.

5.3.1 Inconsistent policies on use of public land for restaurants and retail

Although the application process may be onerous, the food and beverage sector is the only sector that is systematically permitted to use public space for business activities. As noted above, this option is not available to other retailers, giving rise to complaints of unfairness.

This perception of unfairness is compounded by the exceptionally low fees paid by restaurants occupying government land on a non-exclusive (part-time) basis. According to the Land (Miscellaneous Provisions) Regulations, charges range from HKD1 to HKD10 per square metre per year, depending on the district. The fee schedule has not been updated since 1976 and certainly does not reflect the current commercial property values in Hong Kong.

There are complaints of inconsistency even within the restaurant industry, as land use fees may vary wildly depending on the type of land occupied. Restaurants occupying government land exclusively (full-time) are charged full market rates under short-term tenancies. Those which occupy private land may need to pay LandsD over HKD4,000.
5.3.2 Enhanced enforcement and continuing challenges

In the past, the cumbersome process for obtaining outdoor seating accommodation permits was coupled with an ineffective enforcement regime, resulting in widespread illegality especially in the New Territories. This was critiqued by the Ombudsman in 2013, which resulted in the Government taking steps to enhance enforcement.

Since 2013, the FEHD has also deployed special task forces to crack down on illegal restaurant extensions in the New Territories, which has significantly reduced the number of complaints (see Case Study 4 on illegal restaurant extensions in the New Territories). The introduction of the HKD1,500 fixed penalty fine for obstruction of public places (see Section 5.2 on shopfront extension) has provided additional deterrence.
In addition to fines and prosecution, the FEHD’s restaurant licensing mechanism provides administrative means for suspending or revoking restaurant licenses if they accumulate a sufficient number of Demerit Points.  

In practice, however, the threat of license cancellation has had limited effectiveness as the three-tier appeal mechanism enabled restaurants to delay closure for up to a year while applying for a new license. The Ombudsman recommended simplifying the appeals process to two tiers, but after consultation with the restaurant industry, the FEHD opted not to do so. The FEHD has, however, reduced the incentive to appeal by putting license suspensions and cancellations into effect immediately rather than allowing the appeal process to delay implementation. It has also placed a 12-month moratorium on relicensing restaurants that have been closed down for violations, when previously it did not take prior offences into account.

Despite these measures, the ongoing challenge in holding restaurants accountable to the conditions of their licenses makes the FEHD highly cautious when granting outdoor seating permits in the first place. Ms. B, a former civil servant in the Home Affairs Department commented:

“When you apply for [an outdoor seating] permit, a lot of times when we approach the community, there are a lot of objections ... the departments that process these applications consider these applications and justify them, they have to be really careful, so a lot of the time, permits are not given ....”

Later in the interview, she added:

“It is really tough for the departments to enforce, because once the permit is given, there is no renewal system, like an alcohol permit.” – Ms. B, former civil servant

Outdoor seating permits have no fixed renewal period, but are valid for as long as the restaurant remains licensed.
### Problems concerning shopfront extension

#### Shopfront extension

<table>
<thead>
<tr>
<th>Regulated or managed under</th>
<th>Problem</th>
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| District Management Committees | • Designation of “tolerated areas” and “black spots” opaque and inconsistent  
• No system for retailers to apply for shopfront extension exemptions |
| Summary Offences Ordinance  
*s4A: Obstruction of public places*  
FEHD (Hawker Control), HKPF | • Slow lead-times to prosecution and light penalties  
• Objects other than merchandise (non-hawking cases) inadequately addressed due to FEHD’s bureaucratic silos |
| Fixed Penalty (Public Cleanliness and Obstruction Ordinance)  
*Spot fines for obstruction of public places*  
FEHD (Hawker Control), HKPF | • Only applicable to clear-cut cases  
• Can be circumvented with evasive tactics  
• Fines may not be high enough to deter some offenders  
• Public Backlash |
| Public Health and Municipal Services Ordinance  
*s22: Obstruction of street cleaning operations*  
FEHD (Street Cleansing) | • Limited applicability of temporary duration  
• Usually only results in verbal warnings |
| Food Business Regulation  
*s34C: Operating beyond confines of licensed food premises*  
FEHD (Health inspectors, Hawker control) | • Cumbersome application process for legal outdoor seating accommodations  
• No need to renew outdoor seating accommodation licences on regular basis  
• Inconsistent regulatory approaches towards restaurants vs. other retailers |
| Land (Miscellaneous Provisions) Ordinance  
*s6: Unlawful occupation of government land*  
LandsD | • Interdepartmental collaboration needed to address built structures e.g. platforms and awnings  
• Long investigation and prosecution times  
• Inefficient enforcement procedure: warning period must be restarted if objects are moved |
| Land (Miscellaneous Provisions) Regulations | • Outdated fee schedule for part-time use of Government land for outdoor seating accommodations  
• Wildly inconsistent fees for different modes of land occupation |
Yuen Long and Sai Kung
Illegal restaurant extensions

Due to the availability of space and historically weak enforcement, there were major agglomerations of illegal outdoor dining in New Territories districts such as Tsuen Wan, Kwai Chung, Sha Tin, Tuen Mun, and Yuen Long. As a popular tourist destination, Sai Kung Town has similar issues, albeit to a smaller extent.

Until recently, Yuen Long and Tin Shui Wai reportedly had over a thousand tables occupying the pavement at night, drawing complaints about severe pedestrian obstruction, hygiene problems and noise. In Yuen Long, they are concentrated in pedestrianised alleyways such as Kam Fai Path, Chun Yin Square, Fuk Lok Path and the Kai Tei neighbourhood near the Fung Kam Street Sports Centre – these streets are not part of the Transport Department’s pedestrianisation scheme, but they are closed to vehicular traffic as they are too narrow.

According to Yuen Long District Councillor Zachary Wong, for decades, lax enforcement enabled restaurants to write off occasional fines as part of their operating expenses. He thought that the FEHD was afraid to enforce the law in certain areas without Police back-up due to triad presence. Li Mei-siu, the FEHD union vice-chair, also noted that Yuen Long had a heavy triad influence, and that FEHD staff members had been followed and threatened on occasion.

Wong noticed significant improvement over the last couple of years after the FEHD started to send special task forces of health inspectors from their main headquarters. The FEHD began to deploy special task forces in selected districts in 2013 after being criticised for lax enforcement by the Office of the Ombudsman, and later expanded the programme to other districts. In Yuen Long,
the special task force arrived at black spots every evening at 5 p.m. and maintained their presence until 11 p.m., preventing restaurants from setting tables out. This put a stop to illegal restaurant extensions in most areas except Kam Fai Path, which is centrally located enough that customers will still patronise restaurants there after 11 p.m. It also pushed more restaurant owners to seek outdoor seating accommodation licenses.236

This demonstrates that the targeted deployment of resources, rather than simply increasing resources, can make a difference in managing street activities.

“In the end, [we still depend] on the special task force [to handle the problem]. But we don’t quite understand why only the special task force can do it. In fact, they share the same rank [as the local FEHD team]. The only difference is that the special task force is sent from headquarters. This makes us think that the issue is that the special task force does not personally know the shop owners, they’re just here to enforce the law. So does that mean the FEHD staff in Yuen Long are getting too close to the shopkeepers, that they feel sorry if they have to prosecute them? That’s just my guess … I’ve talked to the FEHD … If that is the case, it’s very simple: just assign the FEHD staff in Yuen Long to Tuen Mun, and vice versa; we don’t need a special task force from headquarters.” – Zachary Wong Yuen Long District Councillor237

In Sai Kung Town, seafood restaurants have operated illegally on the waterfront for decades, forming a major element of the area’s tourist appeal. In the late 1990s, the District Officer pushed to legalise the businesses in order to better regulate fire safety and environmental hygiene. This was implemented as a pilot programme in 2003 when the Government launched a Local Community Economy campaign in order to boost business during the SARS-related economic downturn.238 However, the FEHD often had difficulty ensuring that restaurants adhered to the conditions of their permits, with businesses often extending their seating past the allowed area, erecting large awnings, or opening beyond the prescribed times.

In recent years, several Western restaurants have also started putting tables out near Man Yee Playground in the centre of Sai Kung Town. (As in Yuen Long, these areas do not form part of any official pedestrianisation scheme, but are inaccessible to vehicles.) These restaurants have activated the square and created another focal area for locals and tourists. While some restaurants have applied for outdoor seating permits, they put tables out before receiving permission, as applications can take years, especially when neighbours make objections.238 Due to high rental costs, restaurants have limited interior square footage and must use outdoor tables to break even.

The implementation of the HKD1,500 fixed penalty fine for street obstruction in 2016 did result in greater compliance, but also led to public backlash. In 2016, Sai Kung residents organised a petition drive to lobby for greater government support of al fresco dining, on the grounds that tourism is a major element of Sai Kung’s local economy, and outdoor dining enhances the area’s attractiveness.240

Despite the often contentious relationship between businesses and the authorities, overall, Sai Kung’s strategy of legitimisation has been comparatively more successful in managing authorised outdoor restaurant seating than other New Territories districts, allowing a successful tourist attraction to develop while keeping problems reasonably contained.
Figure 39  Restaurant extensions outside Man Yee Park, Sai Kung

Figure 40  Seafood restaurants with awnings along the waterfront in Sai Kung

Photo credit: Astor Shek
5.4 Addressing shopfront extensions

Like many other street activities, shop and restaurant extensions can enhance urban character, but cause problems if not controlled. Ideally, there should be clear rules about what is permitted, and clear consequences for breaking the rules. Hong Kong has struggled with both sides of the equation. Regarding restaurants, outdoor seating permits are difficult to obtain and subject to complex and seemingly arbitrary requirements. On the other hand, enforcement has historically been weak and inconsistent, although recent measures have made enforcement more effective. This provided few incentives for restaurants to seek permits, or for the authorities to grant them. For shopfront extensions, the policies regarding tolerance and enforcement are even murkier, based on the ad-hoc judgment of DMCs.

Policy inconsistency between the treatment of food and non-food businesses is a significant source of complaint. To some extent this inconsistency is justified: the noise and hygiene problems potentially caused by outdoor restaurant seating are more serious than obstructions caused by other shopfront extensions. However, moving towards greater consistency in criteria for granting exemptions, and establishing fair fees for businesses wishing to use public land will go a long way towards satisfying stakeholders and encouraging compliance.

On the enforcement side, while significant progress has been made through the introduction of fixed penalty fines and the use of special task forces, there are situations that fixed penalty fines cannot address or where enforcement is inefficient due to jurisdictional gaps. Some of these gaps exist between different sections of the FEHD; reorienting or reorganising that department may help to address some of these organisational silo issues.
6.1 Description of itinerant commercial activities

Diverse itinerant commercial activities take place in public areas, including hawking, promotion, and touting. They range from traditional hawking to the sale of gym memberships and telecommunications plans and real estate, promotional activities such as the distribution of free newspapers, fliers, and promotional giveaways, and touting. Many commercial promoters display advertising posters or backdrops, and retailers frequently put out unattended roll-up banners in order to direct customers to their shops. Some of these activities may provide passers-by with wanted goods and services while enriching the urban environment. Others may be seen more as nuisances or even harassment. Uncontrolled, these activities may cause obstructions and occupy spaces meant for the use and enjoyment of pedestrians. Other than licensed hawkers who pay licensing fees, those engaged in itinerant commercial activities are not charged for their use of public space.

As the nature of itinerant commercial activities has changed over time, the Government’s traditional hawking-focused regulatory approach has become outdated and increasingly inapplicable, and as a result, significant gaps have emerged. Hawking is over-regulated while other commercial activities are inadequately addressed. There are few laws or regulations directly addressing commercial promotion, so enforcement depends on a range of generic fall-back statutes, with limited effectiveness.
6.2 Hawking

Of these activities, hawking is the most comprehensively and strictly regulated. As previously mentioned, it is an offence to engage in hawking activities without a license, which is issued by the FEHD under the Hawker Regulation. Other than the aforementioned temporary licenses for non-profit fundraising activities, there are two types of hawker license: fixed-pitch, where an outlined pitch is delineated for each hawker; and itinerant, which is mobile in nature, although a trading area may be specified. The Hawker Regulation is enforced by a dedicated hawker control branch of the FEHD which employs 190 hawker control teams, numbering over 2,000 frontline officers.

The regulation of hawkers may be traced back to the former colonial Government’s efforts to move hawkers off the streets – in the 1970s, the Government established a policy of grandfathering out licenses for street hawkers and moving them into indoor wet markets. As of December 2016, 5,496 fixed pitch and 432 itinerant hawker licensees remained.
6.2.1 Changing community aspirations

Strict hawker control practices have limited illegal hawking to a small scale, but the Government’s approach has grown out of step with changing community aspirations. None of the District Councillors interviewed were of the opinion that illegal hawking was a major problem, and some felt the Government should provide more hawking opportunities as a means for elderly and low-income people to make a living (see Case Study 5 on Sham Shui Po’s unofficial night market). These views reflect broad changes in societal attitudes towards hawking, with it being increasingly perceived as an important element of Hong Kong’s heritage and cultural atmosphere. Hawker markets (Ladies’ Market and Temple Street) also make up two of Hong Kong’s five most visited tourist destinations. These changing aspirations have so far resulted in minor policy adjustments. In 2009 FEHD issued a batch of about 280 new licenses for the first time since the 1970s, and after a LegCo subcommittee review in 2014-15, agreed to both facilitate community-led bazaars as well as consider issuing new fixed pitch licenses to traditional craftspeople and dai pai dongs (of which only about two dozen of the latter remain).

However, the broad outlines of hawker policies have remained unchanged. The overall number of hawkers has continued to decline from around 7,000 in 2010 to around 5,900 in 2016 due license buy-back programmes and the retirement and deaths of elderly hawkers.

6.2.2 Outdated definitions

The definition of hawking has not kept up with changes in the types and practices of businesses conducting sales in the street. Under the Public Health and Municipal Services Ordinance, a ‘hawker’ is defined as “any person who trades in any public place – by selling or exposing for sale any goods, wares or merchandise; or by exposing samples or patterns of goods, wares or merchandise to be afterwards delivered; or by hiring or offering for hire his skill in handicraft or his personal services … and any person who itinerates for the purpose – of selling or exposing for sale any goods, wares or merchandise or; of hiring … his skill in handicraft or his personal services”. This has been interpreted as meaning direct monetary exchange for goods or personal services.

Many modern-day promotional activities can be described as hawking-adjacent as they involve the signing of sales contracts (e.g. for telecoms services, gym memberships and real estate), yet do not meet the statutory definition of hawking as registering customers’ financial information does not qualify as monetary exchange, nor are there goods sold on-site. People who buy things such as used mobile phones from passers-by are also not defined as hawkers. They are therefore unregulated under hawker control policies.

The Government’s particular focus on hawking, while appropriate in the past, has grown too narrow. The continued dedication of manpower, resources, and regulatory force to one specific street management issue to the exclusion of others has led to unbalanced regulation.

6.2.3 Abuse of hawker licenses

Outdated policies have also resulted in the abuse of existing hawker licenses. Fixed pitch licenses may only be transferred to immediate family members (usually a spouse) upon death or retirement, while itinerant hawker licenses cannot be transferred at all.
order to derive income, elderly hawkers (most current licensees are in their sixties and seventies) rent out their licenses under the guise of hiring an assistant, who pays the license holder to sit by the stall all day as required by the Hawker Regulation, an arrangement Yuen Long District Councillor Zachary Wong found inhumane as it required the elderly license holder to sit outside in all weather. Larger businesses use elderly hawkers as a front, especially during the Lunar New Year period, to sell fish maw and other expensive delicacies on a large scale. \(^{254}\) Goods are often stored nearby in parked trucks and periodically unloaded onto the stall throughout the day. A side effect of this phenomenon is that when hawkers are caught for violating their license terms, it is usually the elderly license holder rather than the younger (unlicensed) assistant who volunteers to be arrested as a means of minimising losses, as the FEHD may seize the goods of unlicensed hawkers but not licensed ones. \(^{255}\)

Another example of outdated regulations is the licensing conditions for itinerant hawkers, which date from the days when hawkers carried baskets on bamboo poles, and thus had no limit on the size of stalls as the stalls were what could be carried on one’s back. Licensees now exploit this loophole to operate oversized, expandable stalls that are stood on fold-out legs. To ensure that stalls nominally fulfil the requirement of being “itinerant”, castors are affixed to the legs. \(^{256}\)
Sham Shui Po
Illegal hawking

A significant amount of illegal hawking activity takes place in Sham Shui Po. At night, after FEHD patrols have left and the licensed hawker stalls have closed, the area around Pei Ho Market becomes an unofficial flea market for second-hand goods. This draws many shoppers, from curio-seekers to low-income residents seeking inexpensive household items and clothing. On the first to the third days of the Lunar New Year, a famous unauthorised cooked food market takes place on Kweilin Street in Sham Shui Po, which until recently had been tolerated by the FEHD.257

DC records show mixed attitudes towards illegal hawking. While there are concerns about noise, nuisance, and obstruction, some Councillors and community groups have strongly advocated for greater tolerance and legalisation of such hawking in order to provide employment opportunities. District Councillor Chum Tak-shing thought that the Pei Ho Street flea market should be allowed so long as it was well managed. He argued that it was important to foster a vibrant street life, as Sham Shui Po has so little open space that people need to use its streets for recreation.258

As there is such a strong demand for hawking especially during holidays, District Councillors have called upon the Government to provide official venues in order to manage the level of nuisance.259 In 2016-2017, the FEHD and Fire Services Department agreed to facilitate several temporary bazaars proposed by community organisations in locations such as under footbridges, playgrounds managed by the Leisure and Cultural Services Department, and selected streets.260 However, there are obstacles to organising bazaars, including opposition from some residents and other District Councillors,261 and a bureaucratic process that involves seeking approvals from up to 10 different government departments.262 The problem of identifying suitable venues makes it difficult to hold more regular bazaars, particularly when a small number of objections can sway decision makers. Venues too close to residential areas will draw complaints, but areas further away from main pedestrian routes would not be attractive to hawkers due to potentially low numbers of customers.

Figure 44
Unauthorised night market at Pei Ho Street

Photo credit: Carine Lai
Taipei is known for its tolerant policies towards hawking. While licensed hawkers operating in designated markets (“centralised hawker fields”) are given first priority in the selection of pitches, those without licenses are also able to gain some measure of protection by obtaining government permission to operate a stall in one of the centralised hawker fields and joining its associated hawker association. Membership in hawker associations, which are responsible for the day-to-day management of Taipei’s night markets, confers certain rights and benefits for as long as they remain members. Unlicensed itinerant hawkers operating outside of any designated market may be prosecuted, but are frequently tolerated unless they attract complaints. The Taipei Government provides job counselling services to illegal hawkers and assists them in legitimizing their businesses. For more details on Taipei’s hawker policy, see Appendix 1.

**Figure 45** Overseas example: Hawking

**Figure 46** Problems concerning hawking

- Definition of hawking excludes sales without immediate monetary exchange for goods and services
- Few new licences issued since 1970s; decline in hawker numbers despite community support for hawking
- Too much emphasis on hawker control, not enough on other commercial street activities
- Strictly limited transferability of licences incentivises rental of existing licences
- No size limit on itinerant hawker carts
6.3 Promotion and touting

As noted above, promotional, touting, and sales activities that do not involve direct monetary exchange fall outside of hawking regulations. Given the wide variety of such activities, such as the use of pull-up banners on the streets, the distribution of free newspapers, or product giveaways and promotions, realty and telecoms sales promotions, etc, it may perhaps be unsurprising that there is no overarching or other general or specific statutory oversight of them. Commercial promotion arguably represents the widest regulatory void in street management.

A number of general offences may be applicable to such activities, for example under Subsection 4(5) of the Summary Offences Ordinance regarding causing annoyance or obstruction in any public place by exposing things for sale; the aforementioned Section 4A of the same Ordinance; or Section 6 of the same Ordinance regarding street cries for the purposes of selling any article. Under Section 6A (touting), it is an offence for “Any person who in a public place, to the annoyance of or in a manner likely to annoy any other person, importunes such person to buy any article or thing or to give his custom to any business”.

However, many of these provisions are outdated and no longer useful. For Subsection 4(5) (“causing annoyance ... by exposing things for sale”) and Section 6 (street cries), the decades-old maximum fines of HKD500 and HKD50, respectively, are too low to make enforcement worthwhile. The crime of touting under Section 6A is difficult to enforce due to court-imposed requirements. A 1985 case concerning touting Macau ferry tickets in the street established that there needed to be proof of ‘importuning’ (soliciting pressingly or persistently) and that this caused or was likely to cause annoyance. A subsequent case in 2002 ruled that witness statements by pedestrians did not necessarily provide sufficient evidence for conviction, forcing the Police to rely on more labour-intensive undercover operations.

The FEHD may additionally regulate commercial promoters under Section 22 of the Public Health and Municipal Services Ordinance, against obstruction of street cleaning operations. The use of pull-up banners and other advertising materials is also regulated under Section 104A of the same Ordinance, which prohibits the display of bills or posters without the permission of the owner or occupier of private land, or the permission of LandsD or the FEHD on government land. The staff of the FEHD are again empowered under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance to impose fixed penalties for displaying bills or posters without permission, and carry out daily patrols for prosecution action and removal of unauthorised posters.

6.3.1 Inconsistent policies on use of public land for promotional activities

As noted above, hawking is strictly controlled under the Hawker Regulation, but there is no specific statutory oversight over commercial promotion. There is actually more oversight of non-profit booths than commercial ones, as the former must apply for permission for temporary occupation of government land from LandsD.
In contrast, LandsD will not consider applications for commercial booths.\textsuperscript{272} When asked whether commercial booths violated the Land (Miscellaneous Provisions) Ordinance, LandsD did not give a direct answer, saying only that “unauthorised street counters … will cause obstructions/nuisances/safety issues” and that the FEHD and Police would take “appropriate enforcement actions under the applicable laws”.\textsuperscript{273} LandsD therefore declines any significant role in regulating commercial promotions on government land. In any case, enforcement mechanisms under the Land (Miscellaneous Provisions) Ordinance\textsuperscript{274} are unsuited to transient occupations of land. This inconsistency results in a perception of unfair treatment on the part of non-profits and politicians.\textsuperscript{275}

The Government has previously expressed a tolerant attitude towards promotional activities on the grounds that they provide employment opportunities for less skilled individuals such that “a total ban on such activities may affect the livelihood of many people.”\textsuperscript{276} However, these arguments apply equally to hawkers, who are subject to much more regimented regulation.\textsuperscript{277}

\begin{figure}[h]
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\includegraphics[width=\textwidth]{overseas_examples.png}
\caption{Overseas examples: Fees for commercial promotion}
\end{figure}

Some cities charge cities fees in order to hold promotional events or distribute promotional materials in public spaces. For example:

- **NEW YORK CITY**: New York City requires any business holding any kind of promotional event on the street, kerb lane or pavement to obtain a “street event permit” for a substantial fee. Charges vary based on the size of the event, from USD3,100/day for a street booth or tent, to USD66,000/day for extra large events which may require street closures.\textsuperscript{278}

- **MANCHESTER**: The city of Manchester in the UK requires permits for distributing leaflets in certain busy areas of the city. Applicants must pay fees ranging from £111 to £811 based on the number of days the promotion takes place, the time of day, the number of locations, the number of promoters, and the number of products or events being promoted.\textsuperscript{279}
6.3.2 Difficulties in enforcement

In general, commercial promoters are tolerated unless they endanger road safety, obstruct street cleaning, or draw public complaints. However, the FEHD does take action in areas heavily affected by commercial promoters. For example, in September 2017, it announced a two-month pilot campaign to enhance enforcement against illegal advertisements in selected black spots, stating that it would use this pilot campaign to formulate future enforcement strategies.

Enforcement against commercial promoters is affected by FEHD’s internal silos. Hawker Control Teams may prosecute promoters for street obstruction under the Summary Offences Ordinance but do not confiscate their advertising materials. The Cleansing Section may confiscate banners, issue $1,500 fixed penalty fines for unauthorised display of posters, or warn promoters against obstructing street cleaning, but cannot prosecute them for street obstruction. Joint operations between the two branches are sometimes organised, but not consistently.

To fine promoters for unauthorised advertising, they must be caught red-handed in the act of setting up a banner. Otherwise, they may deny responsibility by offering a variety of excuses for why they happened to be standing next to the banner. As an alternative, the FEHD may opt to prosecute the “beneficiaries” of an illegal advertisement, but this presents challenges. Some companies have taken to not printing their names or addresses on promotional banners to avoid identification, but even if identifiable, they escape responsibility by arguing that they are not responsible for their independent contractors’ actions. While some companies may cover the first few fines incurred by their promoters, most penalties fall on the contractors themselves, and therefore have little deterrent effect against their employers.

Figure 48 Telecommunications promoter in front of a pedestrian crossing obstructing sight-lines

Photo credit: Carine Lai
MANAGING ITINERANT COMMERCIAL ACTIVITIES

**Figure 49**  Product promotion and giveaway booth

Photo credit: Carine Lai

**Figure 50**  Restaurant tout

Photo credit: Carine Lai

**Figure 51, 52**  Unattended advertising materials

Advertising banners supported by weighted shopping trolleys, left. Unattended dress dummy displayed as advertising, right. Photo credit: Carine Lai

**Figure 53**  Storage box belonging to a company that sets up pull-up banners for other businesses on a footbridge in Yuen Long

Photo credit: Carlo Chan
## Problems concerning commercial promotion

### Commercial Promotion

<table>
<thead>
<tr>
<th>Regulated or managed under</th>
<th>Problem</th>
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<tbody>
<tr>
<td><strong>Summary Offences Ordinance</strong></td>
<td></td>
</tr>
<tr>
<td>s4(5): Causing an annoyance or obstruction in any public place by exposing things for sale</td>
<td>• Outdated fine – maximum HK$500. No longer enforced.</td>
</tr>
<tr>
<td>HKPF</td>
<td></td>
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<tr>
<td>s6: Street cries for the purpose of buying and selling any article</td>
<td>• Outdated fine – maximum HK$50. No longer enforced.</td>
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<td>HKPF</td>
<td></td>
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<tr>
<td>s6A: Touting in public place to the annoyance or in a manner likely to annoy any person</td>
<td>• Hard to enforce – strong evidence of “importuning” and “annoyance” must be presented in court.</td>
</tr>
<tr>
<td>HKPF</td>
<td></td>
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<tr>
<td>s4A: Obstruction of public place</td>
<td>• Low enforcement priority for Police and FEHD Hawker Control.</td>
</tr>
<tr>
<td>FEHD (Hawker Control), HKPF</td>
<td></td>
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</tbody>
</table>

| **Public Health and Municipal Services Ordinance** | |
| s22: Obstruction of street cleaning operations | • Usually only results in verbal warnings. |
| FEHD (Street Cleansing) | |
| s104a: Unauthorised display of bills and posters | • Banner frames have to be stored as “evidence” – burdensome on street cleansing crew |
| FEHD (Street Cleansing, Hawker Control) | • Not always possible to identify culprit or beneficiary |
| | • Demand notes rarely issued |

| **Fixed Penalty (Public Cleanliness and Obstruction Ordinance)** | |
| Spot fines for unauthorised display of bills and posters | • Must be caught red-handed |
| FEHD (Street Cleansing, Hawker Control) | • Fines do not affect beneficiaries (i.e. employers of promoters). |
In the case of unattended advertising materials left on streets, the FEHD confiscates them and may issue demand notes to recover removal costs from the owners if identifiable based on the information contained in the advertisement. However, the FEHD rarely succeeds in identifying owners: In 2014 and 2015, the FEHD confiscated a combined 5.9 million illegal posters, including 33,138 pull-up banners, but issued only 2,138 demand notes.

Confiscation of pull-up banners also presents logistical problems: legally, the FEHD is technically only empowered to confiscate the posters themselves and must treat any supporting frames as “evidence of the offence”. As evidence, they must be stored for 72 hours in a government warehouse in case the owner attempts to reclaim them. This rarely occurs as banners can be cheaply replaced. Cleansing Section staff find these operations burdensome as they are not equipped with vehicles and must hire trucks to remove them. FEHD union vice-chairperson Li Mei-siu expressed concern that it was impossible to handle the banners to the standards required for criminal evidence, which cause FEHD workers difficulties if the collection procedure were challenged in court.

Overall, the ease with which penalties may be evaded as has enabled businesses that exist for the sole purpose of erecting unauthorised advertisements to flourish, working around the patrol schedules of FEHD officers to avoid being caught red-handed.

6.4 Addressing itinerant commercial activities

The use of public space for itinerant profit-generating activities presents some of the thorniest street management problems in Hong Kong. The regulatory approach is inconsistent, outdated, and unbalanced.

The most serious regulatory gaps concern commercial promotion and cash-free sales activities. For historical reasons, there has been a special focus on the regulation of hawking, but traditional hawking is no longer the main type of commercial activity occurring in streets today. Moreover, the community is now more supportive of hawking than current regulation allows. Many of the statutes specifically targeting nuisance promotions (e.g. touting, street cries) are outdated and virtually unenforceable. The applicable statutes are half-heartedly enforced as they are of relatively low priority to the relevant government departments.

Effectively regulating commercial promotion will likely require updating the relevant statutes. However, even in the absence of legislative amendment, the reorganisation and reorientation of the FEHD would be beneficial in order to address gaps in enforcement.
MANAGING ARTISTIC AND RECREATIONAL ACTIVITIES

7.1 Description of artistic and recreational activities

Artistic activities in pedestrianised areas may include the sale of art products and photos, busking, and performances. Some performances are participatory and include audience members in singing and dancing. Recreational activities range from spontaneous activities like sitting out, picnicking, sporting and gaming activities, to highly planned events involving stalls of a bazaar or fairground nature.

The use of streets and public spaces for recreational activities is an essential element of urban vibrancy, and according to urban design experts, is the marker of truly successful public spaces.298 However, in a dense urban environment like Hong Kong, recreational and artistic activities can cause problems for other users by impeding pedestrian mobility, causing excessive noise, or producing litter. It is therefore necessary to manage recreational activities in a way that facilitates them while balancing the interests of different stakeholders.

7.2 Artistic activities

According to the Government, “At present, there is no specific mechanism under statute to regulate street performance or street performers”,299 and further, “there are no laws in Hong Kong prohibiting street performance, but street performance must not pose any risk to public safety or cause nuisances or obstruction to the public, as in the case of other activities that take place in public space”.300

A number of broader statutory provisions may thus apply to street performances. For planned public events such as concerts, fairs and festivals, it is necessary to obtain a Temporary Place of Public Entertainment license from the FEHD (see section 7.3 on recreational events and activities), but this is not required for smaller, more impromptu street performances.301
The Summary Offences Ordinance does place a number of restrictions on street performance. Subsection 4(15) requires anyone seeking to play musical instruments in any public street or road to obtain permission from the Commissioner of Police, although as explained below, this is no longer well enforced. 9. Similarly, police permission is also required for lion, dragon or unicorn dances. 99. The Summary Offences Ordinance also makes it an offence to carry out “objectionable performances” of an “indecent, obscene, revolting or offensive nature” in public. 9. Separately, the Control of Obscene and Indecent Articles Ordinance also prohibits the display of indecent matter.99

More relevantly, ‘neighbourhood noise’ including from sources such as musical instruments, record players, loudspeakers and businesses are regulated by the Noise Control Ordinance under the EPD. 99 Under Section 5 of that Ordinance, those who produce neighbourhood noise may commit an offence if such noise is a source of annoyance to any person.
Whilst the Government’s position stated in its Policy and Measures on Street Performance paper is that “it has all along been the Government’s policy to promote arts and culture to the public and encourage public participation in order to integrate the arts into the community,” this has only been promoted through two small-scale programmes. One is the ‘Open Stage’ pilot scheme, where piazzas managed by the Leisure and Cultural Services Department were designated as places for public performance for auditioned, qualified, and registered performers, free of charge. However, the scheme only continues at Sha Tin Town Hall plaza due to the low level of patronage at other designated places. The second programme is the Street Performance Scheme operated by the West Kowloon Cultural District Authority which offers eleven designated pitches to auditioned performers at its Nursery Park. Permits cost HKD100 and are valid for one year.

It thus appears that although the Government’s position is to encourage street performance, in practice there has been a fairly hands-off approach with street performance constrained principally by general laws against obstruction and noise. The Government has so far been very reluctant to implement a licensing regime for street performance, stating “extreme caution should be exercised in considering the licensing regime for street performance. In the view of the Administration, introducing licensing requirements for street performance would mean forbidding unlicensed persons to conduct street performances, which would be a drastic change from the present arrangement. As the proposed licensing requirement might be subject to challenge on the grounds that it represented a violation of the right to freedom of expression guaranteed under the Basic Law, it was [sic] necessary to carefully consider, among other things, whether there were solid legal grounds and sufficient community support for the introduction of a licensing regime for regulating street performance.”

7.2.1 Inadequate control of street performance noise
The Government’s hands-off approach to street performance has enabled a vibrant street performance culture to develop since the Transport Department’s first pedestrianisation schemes in 2000, with performers now appearing in many popular destinations throughout the city. However, the lack of active management has allowed a small number of problematic hotspots to develop, resulting in severe noise complaints that threaten to undermine the public’s support for street performance and pedestrianisation in general (see Mong Kok case study below).

As noted above, people playing musical instruments in public places are required to obtain permission from the Commissioner of the Police. However, there appears to have been only a token implementation of this statutory provision as past court cases have rendered it practicably unenforceable.

A landmark case in 2010 saw the acquittal of a juggler of street obstruction charges as the court upheld a right to cultural and artistic expression in public places under the Basic Law. In 2015, the High Court overturned a conviction for playing a guitar and harmonica outside an MTR station without police permit due to the Basic Law right to engage in cultural activities. The Court ruled that the reasonable use of public spaces without causing undue noise or obstruction constituted a “lawful excuse”, thus lacking a permit in and of itself did not breach the Summary Offences Ordinance. Since performers can no longer be prosecuted simply for not having a permit, police officers do not routinely check if performers have them.
The court also criticised the application process for being unclear and inconvenient. In response, the Police created an online application form for one-off performances, but otherwise make no attempt to regulate the number, location, time, or types of street performance. Few performers make use of the form: according to Police figures, just 48 performers applied in 2014, 60 in 2015, and 64 in 2016, all of whom were approved.

The main means of addressing nuisances caused by street performance is Section 5 of the Noise Control Ordinance. In practice such offences are difficult to enforce as "it is not possible to specify fixed acceptable noise levels or noise measurement procedures to be used in assessing the acceptability of the noise" due to the nature of the noise sources covered by the provision. Enforcement is carried out by the Police "on a subjective nuisance basis", who have the discretion to determine whether to issue a summons based on a "reasonable man" test. Since street performances often take place in areas with multiple performers, it is difficult to prove in court that the defendants were the sole or main cause of the nuisance.

The Police therefore mainly play a mediating role by giving out verbal warnings. Street performers are issued summonses only if they refuse to cooperate.

**FIGURE 56** Overseas examples: busking schemes

Many cities implement licensing schemes for buskers that use various strategies to manage noise, allocate space, and rotate performers. For example:

**VANCOUVER**
- Rather than imposing an objective decibel limit which may not be possible to enforce in areas with high levels of ambient noise, Vancouver regulates the use of amplification, allowing battery-powered amplifiers only for instruments that cannot otherwise be heard, e.g. electric guitars.
- To prevent too many performers from clustering together, Vancouver limits the number of performance to two per street block at a time. Performers are required to change locations every 60 minutes to prevent people from becoming annoyed by constant repetition.

**SINGAPORE**

Some cities such as Singapore designate a fixed number of pitches where performances are permitted by application. Others, such as Auckland broadly allow performers in most parts of the city but identify a few key zones where permission is required.

**NEW YORK CITY**

Within a public space, activity areas may be drawn to preserve space for pedestrian circulation. In New York City’s Times Square, costumed characters, ticket sellers and other hawkers are required to stay within painted boxes (“Designated Activity Zones”) in order to deter aggressive touting and solicitation of tips. There are also designated “Pedestrian Flow Zones” where no activities except pedestrian circulation are permitted.

For more details on street performance licensing and regulation overseas, see Appendix 1.
Mong Kok pedestrian zone
Failure of noise regulation

The part-time Mong Kok pedestrian zone in Sai Yeung Choi Street South is perhaps Hong Kong’s most iconic pedestrian zone, attracting so many competing users that it became a victim of its own popularity. In 2013, the scheme was partially rolled back due to persistent complaints, and is widely perceived as a failure of street management.

The pedestrianisation scheme was first implemented in August 2000 operating Mondays to Saturdays from 4 p.m. to midnight, and on Sundays and general holidays from 12 p.m. to midnight. Centrally located and four blocks long, the pedestrian zone became a magnet for a wide variety of activities, primarily performance-based, and acquired a carnival-like atmosphere.

Street performers, karaoke singers, commercial promoters, hawkers, protesters, and other groups competed for space with residents, shoppers, and tourists. The sheer intensity of activity resulted in severe noise, nuisance, and obstruction in spite of joint patrols between the FEHD and the Police up to 6 times a month. In an escalating arms race to be heard over others, street performance groups began to use concert sized amplifiers powered by generators. The practice of issuing verbal warnings brought temporary relief at best.

![Map of pedestrian schemes in Mong Kok](image)
Figure 58-64: Activities in Sai Yeung Choi Street South

58. An acrobat performs a balancing act
59. “Dancing aunties” dance with audience members for tips
60. Portrait artist
61. Small-scale political demonstration
62. Singer surrounded by a crowd
63. A cluster of telecoms promoters
64. Promotional activity with backdrop and props

Photo credits: Carine Lai
“Right now the residents on both sides (of the street), they can’t relax, have dinner with their families, or watch TV when they get home. They’re suffering a lot because of the noise, especially the elderly and newborn babies. We got a lot of complaints from pregnant women. People dread leaving their homes … Recently we met with local retailers; (they said) chain store employees don’t want to be posted here because of the impact of the noise on their mental health. They can’t hear the customers speak. The reaction (we got) from businesses was big.” — Chow Chun-fai, District Councillor for Mong Kok South

District Councillor Chow Chun-fai tried to negotiate with the street performers to regulate their own volume by mutual agreement. This broke down because of the desire of performers to try to drown each other out. It was not uncommon for street performers to call the Police to make noise complaints about each other.

There were also turf disputes between various hawkers, commercial promoters, and the performers. Then-District Councillor Chan Wai-keung suspected that criminal syndicates were behind some of these groups competing for space. In 2015, turf disputes acquired a political element, with localists protesting against use of the pedestrian zone by middle-aged Mainland immigrant “dancing aunties”. There have also been debates within the street performance community about performance quality; whereas in its early days the zone was seen as an incubator of talent, in has more recently become dominated by karaoke booths which charge prospective singers to perform, driving away those who define themselves as legitimate buskers.

Photo credits: Carine Lai

**FIGURE 65, 66** Large-scale amplification system used by street performers in Mong Kok

**FIGURE 67** Police officers warning a street performer to turn down the volume

Gas-powered generator (right) used to power large speakers and soundboard (left).
Acid attacks
In December 2008, and May and June 2009, bottles of corrosive drain cleaner were thrown from a rooftop into the Mong Kok pedestrian zone, injuring dozens of people. The incidents sparked serious concerns about public safety in pedestrianised areas, and prompted the Yau Tsim Mong DC to form a Working Group on Pedestrianisation in Mong Kok District to install CCTV cameras on nearby rooftops.

Aside from overseeing the cameras, the Working Group lacked the power to meaningfully ameliorate the situation, and was disbanded about a year later. District Councillor Chan Wai-keung, who served on the Working Group, felt that he and his fellow councillors lacked the necessary expertise to handle urban planning issues, and that the District Officer at the time did not provide proactive leadership.

De-pedestrianisation
In the absence of policy solutions from higher levels of government, District Councillors began lobbying for de-pedestrianisation. District Councillor Chow Chun-fai organised signature campaigns and secured the support of other council members. The Transport Department twice agreed to shorten the hours in August 2010 and July 2012. Finally, in November 2013, the Traffic Transport and Housing Committee of the Yau Tsim Mong DC passed a motion urging the Transport Department to reduce the hours to weekends only. The new hours from 4 p.m. to 10 p.m. on Saturdays and from 12 noon to 10 p.m. on Sundays and public holidays went into effect on 20 January, 2014. In spite of his actions, Chow said that it was a last resort and that he would support reasonable policies to regulate street performers and commercial activities, pointing to successful regulatory schemes in Paris and other cities as examples.

The reduced hours have curbed, but not resolved, the noise problem. While the return of vehicles has prevented street performers from using the street on weekday nights, Chow reports that weekend activities have intensified in response to the reduction of hours. Figure 64 shows that while the number of noise complaints initially fell from 1,066 in 2013 to 636 in 2014, they rose back to 1,232 by 2016. However, during the four-year period, fewer than 10 summonses were issued annually, and just one case ended in conviction, with a HKD500 fine being levied.
## 7.3 Recreational events and activities

Recreational activities can range from large, organised events to small-scale spontaneous activities like picnicking. Planned events taking place in streets or public spaces such as concerts, stage performances, movie screenings, lectures, exhibitions, contests, bazaars, amusement rides and dance parties\(^\text{345}\) are regulated under the Places of Public Entertainment Ordinance,\(^\text{346}\) which requires organisers to obtain a Temporary Public Place of Entertainment license from the FEHD.\(^\text{347}\) Applicants must submit detailed scale drawings of the event space and pay a licensing fee. Depending on the activities taking place, additional licenses may be required, for example an “amusements with prizes licence” from the Office of the Licensing Authority for games with prizes at funfairs and bazaars\(^\text{348}\), or a permit from the Electrical and Mechanical Services Department for operating amusement and kiddie rides.\(^\text{349}\)

Smaller-scale, spontaneous recreational activities such as sitting, lying down, eating, tai chi or dancing require no specific regulatory oversight. These types of recreational activities are entirely legal uses of street space, provided that they do not violate general street obstruction, noise, or littering laws (see Case Study 7 on gatherings of foreign domestic helpers (FDHs) in Central on weekends). However, the Summary Offences Ordinance does contain a provision (Subsection 4(23)), which makes it an offence to “[play] at any game or pastime to the annoyance of the inhabitants or passers-by; or [play] at any game or [loiter] in any public place, so as to obstruct the same or create a noisy assembly therein”.\(^\text{350}\) This provision, dating from 1949, illustrates how much street uses have changed since then, as it is now rare to find such recreational activities in streets today.
Central District
Tolerance, Self-sorting and Mitigation

Central District provides a counterpoint to the problems in Mong Kok and illustrates the idea that nuisance-causing recreational activities can be accommodated and tolerated in compatible areas. Central serves as Hong Kong’s main Central Business District on weekdays, but hosts intensive recreational activities at night and on weekends. Lan Kwai Fong and SoHo comprise Hong Kong’s largest and most active bar district. It is pedestrianised at night on Fridays, Saturdays, Sundays and public holidays. Noise comes not just from drinking establishments, but also from revelers gathering in the streets outside. On Sundays, thousands of Filipina and Indonesian Foreign Domestic Helpers (FDHs) also gather on Chater Road and nearby parks, squares, underpasses, and pedestrian footbridges on their day off.

Despite these activities, relatively few complaints are made because they have arranged themselves into areas of compatibility over time. However, the transition process has not been free of problems. In these cases, the relevant government departments work to mitigate the impacts. According to District Councillor Cheng Lai-king and Assistant District Officer Penny Wong, the nightlife scene in Lan Kwai Fong attracts fewer complaints as the surrounding land users are mainly commercial. Noise-averse residents moved away long ago, and many buildings have been converted into short-term serviced apartments. Likewise, street performers drawn by a potential audience in the revelers and tourists congregate in non-residential areas around Lan Kwai Fong and the pedestrian footbridges towards the waterfront. Noise complaints come primarily from High Street, where bars and restaurants have recently expanded into previously quiet neighbourhoods. The liquor licenses granted to the restaurants stipulate that they have to close their doors after a certain time at night, but enforcement and education are ongoing efforts. These issues have been raised in Central and Western District Council meetings and are subject to ongoing monitoring and review by the DC, District Officer and the relevant departments.

The Central and Western DC also receives relatively few complaints about FDHs gathering on Sundays, a day when very few office workers are present in Central. District Councillor Cheng Lai-king considers the Sunday pedestrianisation of Chater Road a success due to the diverse activities that FDHs carry out there, which range from picnicking and singing to religious meetings, political rallies, and labour advocacy.

**Figure 70** Bar patrons sitting outdoors in Lan Kwai Fong

Photo credit: Carine Lai
For the Central and Western District Office, the main issue of concern is not the gathering of FDHs per se but obstruction caused by packing and vehicle loading on the part of a courier company used by many FDHs to send packages home. To mitigate the problem, the District Officer, in consultation with the District Council and with the support of the Police and the FEHD, met with the business to identify ways to speed up the loading process, reduce the area used for packing and the nuisance caused to local residents and at the same time discussing longer-term solutions. As part of their routine efforts, the FEHD conducts weekend patrols to manage litter and prosecute illegal hawking, while the Police prosecute visa violations. FDHs are generally not prosecuted for obstruction of walkways. In this way, government departments work together to manage the situation while still allowing diverse and vibrant activities to happen.

The current state of acceptance came about after years of contention. In the early 1980s, when the MTR opened in Central, the biggest landowner in the district, Hong Kong Land, proposed to pedestrianise Chater Road on Sundays in the hopes that it would attract more shoppers, but instead the pedestrianised area attracted FDHs. This may have occurred because the retail mix, consisting mainly of luxury goods shops, was not diverse enough to attract many people on weekends, allowing FDHs to move into the vacuum. Property owners and commercial tenants complained that the presence of FDHs deterred customers and some began to rope off areas of their buildings and pedestrian walkways to prevent domestic helpers sheltering there from the weather. Attempts in the 1990s by the then-District Board and property developers to relocate the domestic helpers to community centres – and in one heavily criticised proposal, to car parks – were unsuccessful, and over time their presence became accepted.
7.4 Addressing recreational and artistic activities

The most significant problem surrounding recreational and artistic activities in Hong Kong is the lack of active management of street performers and the inadequacy of the Noise Control Ordinance in mitigating high levels of noise. While street performers have not caused major disruption in most areas where they are found (e.g. the waterfront), the high profile case of Mong Kok continues to provide a negative example. There is a need for a comprehensive busking scheme.

The Government has so far been cautious in taking action to regulate street performance because of the potential for legal challenge on freedom of expression grounds. However, fear of judicial review should not prevent the government from taking action. Cities overseas provide several examples of busking schemes that may fulfill the legal principle of proportionality by preserving the rights of performers while meeting the government aim of limiting nuisance.

Even some street performers have called for a licensing scheme as this would reduce turf disputes, confer legitimacy on street performers by formally distinguishing them from beggars, and perhaps raise the quality of performance. Section 8 will discuss ways of regulating street performance in greater detail.

The Central case study shows that recreational activities can take place with minimal conflict in appropriate locations, i.e. the waterfront, commercial areas, and outside public transport hubs. While self-sorting occurred organically in Central over time, location-sensitive management and programming could be part of a deliberate policy to encourage spontaneous, vibrant activities in appropriate places.

The case studies of Mong Kok and Central also raise some difficult issues about the use of public spaces by socially marginalised groups. Mong Kok’s “dancing aunties” and Central’s FDHs generated conflict not only because of disruptive behaviour, but also because of prejudice against them. The nature of public spaces is that they are inclusive and unpredictable, unlike exclusionary spaces such as privately-managed shopping malls. Proactive management practices that provide quality environments and foster diverse activities can ensure that pedestrianised streets are attractive to all while remaining inclusive.
THE WAY FORWARD

This section will explore possible ways to address the street management problems outlined above in Sections 2-7 in order to facilitate managed vibrancy and to close some of the major regulatory loopholes identified. Given the breadth and complexity of the issues involved, the approach here is to try to address them in an integrated way. The suggestions below may not address all problems, but attempt to tackle the most significant ones.

The study identified the following issues in the management of pedestrianised zones in Hong Kong:

a) Silos in Government, both inter- and intra-departmental;
b) Misplaced priorities: there is a disproportionate focus on hawker control but little to no active management of commercial promotional activities and street performance;
c) Policies do not facilitate vibrant street uses in a fair or systematic way
d) Inconsistent and arbitrary rules on the use of government land for commercial purposes.
e) Outdated legislation that is no longer enforceable or does not fit the current situation
f) Inefficient and cumbersome enforcement procedures

To address these problems, the Government must first and foremost produce a well-considered policy statement 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, the Government should consider implementing a range of reforms, both administrative and legislative in nature. Below are offered a range of policy recommendations as preliminary suggestions. As street management concerns the use of public space, community views must also be taken into account to ensure stakeholder acceptance and enhance effectiveness.
Three types of prospective solution are set out below: administrative solutions, which require no legislative or regulatory changes; existing legislation in need of review; and potential new legislation for management of pedestrianisation.

8.1 Administrative Solutions

8.1.1 Joined-up government

Street management is a neglected area of policy because it falls under the jurisdiction of multiple government departments and bureaux, each of which consider it peripheral to its core objectives. Street management involves departments located within the bureaux for Home Affairs, Food and Health, Security, Development, Transport and Housing, and the Environment. In order to address cross-jurisdictional issues under clear leadership, the Government may consider appointing a City Betterment Commissioner as a special post under the Chief Executive. This Commissioner’s role would be to develop a city betterment agenda in the context of the Government’s Hong Kong 2030+ territorial development strategy, which calls for the review of “policies, design, guidance, provision and management of public spaces (including streets and other pedestrian passageways) for better public enjoyment”. He or she could therefore address broader issues to do with the public realm including walkability, urban design, and open space as well as street management. Interbureau discussions should start by identifying qualities that are desired in pedestrian areas from a placemaking perspective, then work backwards to develop the policies and regulatory changes necessary to make them possible.

Any new regulatory measures with cross-departmental implications could be implemented through a Memorandum of Understanding (MoU) to be signed between the relevant departments, in order to clearly set out regulatory, management and enforcement responsibilities.363

This interbureau approach may be extended to frontline enforcement as well. The activities in pedestrianised zones often have cross-departmental implications, and it is resource-intensive and unsustainable for District Offices to organise joint operations frequently. The Government may consider establishing standing interdepartmental teams of street management officers to patrol and supervise certain high profile streets and pedestrian areas. The street management officers 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. However, their role would not solely be to issue fines after offences occur, but to give advice, deescalate conflicts, provide information and assistance to pedestrians, and direct pedestrian traffic. Their purpose would be to make prominent spaces appear supervised and cared for, which in and of itself may discourage more irresponsible behaviours.

8.1.2 Reorganise the FEHD

The FEHD plays a significant front line role in street management, but 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. Over time, its priorities have also become unbalanced and no longer meet current needs. The reorganisation of the FEHD should therefore be a high priority.
The FEHD currently dedicates a significant amount of manpower and resources exclusively to hawker control, while other activities like commercial promotion and obstructions caused by objects other than shop merchandise are deemed low priorities or beyond its scope.

In order to increase the FEHD’s effectiveness, the Hawker Control Team may be reorganised into a broader Street Management Team with frontline officers responsible for enforcing all relevant legislation and regulations concerning hawking, hygiene, and obstruction and banner display. This is essential to the effective enforcement of existing laws and regulations.

However, in order to implement wider regulatory reforms such as those suggested below, the FEHD’s mission should be reframed from its traditional focus on food safety, hygiene, and nuisance prevention to a broader remit concerning street management, including the promotion of vibrancy. This should include the flexibility to develop controls based on local circumstances and aspirations.

8.1.3 Implement a licensing scheme for street performers

As the study has shown, the Noise Control Ordinance has not been effective in limiting extreme noise levels from large clusters of street performers. The need for active management through some form of licensing has become increasingly clear. Implementing a street performance licensing scheme would not necessarily require any legislative amendment as the Summary Offences Ordinance already authorises the Commissioner of Police to grant permission for playing musical instruments on the street, despite the fact that this provision is not currently enforced.

While the courts have previously overturned busking convictions on freedom of expression grounds, a carefully designed scheme should be able to satisfy the legal requirement of proportionality when attempting to regulate any constitutional freedoms. Reference can be made to several overseas schemes on striking an appropriate balance between preventing excessive nuisances and protecting freedom of expression (see Figure 56 and Appendix 1).

In designing a busking scheme, the Government should keep the following principles in mind. First, to avoid the appearance of restricting speech on the basis of content, it is not advisable to require any audition process. Second, the allocation of performance space should be fair and transparent – if there is a need to limit the number of performers in a place at one time, spaces should be rotated to prevent any group from monopolising desirable locations. Third, any restrictions should be narrowly tailored to the purpose of preventing excessive noise and obstruction in areas with a documented history of these problems. Some type of zoning may be useful, where different rules apply in different locations: for example, restrictions on noise may be imposed in residential areas but not on the waterfront. Fourth, licenses should be issued for free or for a token sum in order to avoid imposing financial barriers to free expression, and to incentivise registration. A licensing scheme would have additional benefit of providing street performers with legitimacy so that they are not perceived as beggars by law enforcement officials or the public. It may also reduce turf disputes and ensure a fairer allocation of space. The potential to lose one’s license after repeated rule violations would give performers an incentive to cooperate with the scheme.

The details of a future licensing scheme should be developed through public consultation in order to ensure community buy-in.
8.1.4 Direct regulation of commercial promoters

The study has described the problems caused by the absence of any direct regulation of commercial promoters. It may be possible under current law to set up a registration scheme for commercial promoters in order to limit their total numbers, regulate the locations where they operate, and limit the size of the areas they occupy in a manner similar to hawker licensing. One way to do so may be through Section 4(5)(i) of the Summary Offences Ordinance, which makes it an offence to “cause any annoyance or obstruction in any public place by exposing anything for sale in, or upon, or so as to hang over any street, road or footway ...” without “lawful authority or excuse”. It is argued that commercial promotion may fall within the scope of “exposing things for sale”, and
a registration scheme under the auspices of police authority would constitute a “lawful excuse”. Alternatively, the Government may consider requiring commercial promoters to obtain permission from LandsD in the same way that charities and politicians are currently required to under the Land (Miscellaneous Provisions) Ordinance.

Unregistered commercial promoters or those operating outside of permitted areas would be prioritised for enforcement under existing laws (e.g. for unauthorised display of posters). Similar to street performances above, registration should initially be free in order to incentivise registration. If a land occupation fee were to be introduced at a later time, it should be set at a rate lower than the applicable fines to encourage compliance.

8.1.5 Facilitate shopfront and restaurant extensions where appropriate

As shown in the study, while enforcement tools for illegal shop and restaurant extensions have been upgraded in recent years, the policies surrounding them are inconsistent and arbitrary. Enforcement also sometimes provokes backlash not just from businesses but from customers and some residents, as current policies do not do enough to legitimise shopfront and restaurant extensions where they are wanted by the public. This in turn undermines the consistency of enforcement and makes the job of frontline enforcement officers more difficult.

The Government should reexamine policies regarding shop and restaurant extensions together to develop more consistent rules that allow them in appropriate areas on a fair and systematic basis. The Government should consider implementing an application system for shopfront extensions, whereby retailers can obtain permission if they fulfill some objective set of criteria.

If this is not possible without legislative amendment, the Government should develop a set of public design guidelines to guide DCs and DMCs in designating tolerated zones on a more transparent and consistent basis. The guidelines would define appropriate locations based on criteria such as pavement width, type of road, and peak pedestrian flow while setting conditions concerning minimum clearances for pedestrian flow, fire safety, sight lines for traffic and pedestrian crossings, and the size and type of shop displays. Retailers in tolerated zones who make use of shopfront extensions should also have to pay the same standard charges for the use of government land as restaurants with licensed part-time restaurant extensions.

A similar approach could be taken to streamline the process for obtaining outdoor seating accommodation licenses for restaurants. The FEHD may consider working together with other relevant departments to develop a set of simpler guidelines and conditions for restaurant extensions with a typology of acceptable configurations (e.g. for table arrangements, awnings, and umbrellas). This would reduce the need for so many departments to review each application and give restaurant owners guidance on how best to gain approval and stay in compliance. The FEHD and HAD should also consider developing clear and transparent guidelines on the public consultation process, which currently involves HAD consulting with local District Councillors, other local political figures and residential committee members. This vague discretionary process currently allows a single complaint to block an application even when the majority of neighbours have no objection. A practice such as polling immediate neighbours and granting the application if fewer than a certain percentage object would make the process more rational.
Resume hawker licensing, facilitate temporary bazaars

Despite the one-off issuance of 280 new licenses in 2009, the overall number of hawkers has continued to decline steadily. However, the community is supportive of hawking and wants to see it preserved. As elderly hawkers continue to retire and give up their licenses, the Government should consider reissuing them to new hawkers in order to stem the decline of street markets.

The Government should also consider simplifying the bureaucratic approval processes for community groups seeking to hold temporary bazaars. The Government may even consider facilitating some temporary bazaars to be held on a regular basis, e.g. one Sunday per month.

Low-hanging fruit

The following administrative measures consist of low-hanging fruit that the Government may implement in the short term.

• ‘Name and shame’ approach to beneficiaries of unauthorised advertising

It has been noted that penalties incurred by commercial promoters have little deterrent effect because they usually fall on the promoters themselves rather than the companies being promoted.

Thus, a measure that may enhance the deterrent effect on companies is to publish the names of the companies whose representatives are most frequently issued fines, summons or demand notes for illegal display of bills and posters or street obstruction. This ‘name and shame’ approach may increase the control they exercise over these promotional methods.

• Enhance public education

Regulation and punishment alone are not enough. Education is also needed to change social norms and promote responsible behaviour. When implementing the fixed penalty fine for street obstruction in 2016 and 2017, the HAD also conducted an extensive campaign of public service announcements to inform the retail sector of the new measures and to encourage them not to block pavements.

The Government could conduct similar campaigns to discourage commercial promoters from obstructing pedestrian passageways and discourage consumers from patronising such booths.

Similarly, the Government could also engage with street performers to develop a voluntary code of conduct to encourage responsible practices such as noise control, pitch rotation, safety precautions, crowd management, and negotiating respectfully with nearby shops to prevent conflicts. This would also serve to educate the wider public about responsible street performance practices.

• Increase resources for frontline enforcement officers and use them more efficiently

Providing more resources to Government departments involved in frontline enforcement and allocating them more efficiently may significantly improve their effectiveness. For example, within the FEHD, employing more Cleansing Foremen,
equipping them with vehicles, assigning Hawker Control Teams to handle non-hawking related pavement obstructions, swapping enforcement teams between districts or using special task forces on a more regular basis may enhance the enforcement of current laws.

Implementing any of the proposed schemes above for busking, commercial promotion and supervision of pedestrian zones will also require an initial increase in resources for administration and enforcement in the government departments involved. It is critical to provide sufficient resources in this regard.

- **Impose conditions on itinerant hawker licenses**
  One problem identified was the abuse of itinerant hawker licenses through the use of extremely large hawker carts. Hawker licenses must be renewed on a yearly basis. In renewing them, the Director of the FEHD may attach additional license conditions to limit the maximum size of hawker carts, and perhaps require itinerant hawkers to move to a new location once every few hours.

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### 8.2 Amendment of existing legislation and regulations

In this section, existing laws and regulations, which are problematic or outdated, are identified and suggested amendments are proposed. It is recommended that the Government review these laws and regulations in order to make them more effective in the present day.

#### 8.2.1 Update definition of hawking

As noted in the study, the definition of “hawker” under the Public Health and Municipal Services Ordinance fails to include modern-day hawking-adjacent activities involving the indirect sale of goods or services. Selling on streets no longer necessarily involves the physical exchange of merchandise for cash, and provision of services no longer includes only those provided by the seller on-site. The Government should therefore review the definition of hawking. A modern definition should include indirect sales through the registration of customer financial information for goods and services provided off-site by a third party. Updating the ordinance would bring these activities under the purview of the Hawker Regulation, enabling the FEHD to license them as itinerant hawkers.

#### 8.2.2 Regulate the use of amplifiers under the Summary Offences Ordinance

The provision in the Summary Offences Ordinance against playing musical instruments without police permission dates from 1964, before widespread use of mobile amplification systems by street performers. In view of the use of recorded music by street performers, as well as the increasing use of amplification between competing performers, the Government should consider amending the ordinance to give the Police the authority to create regulations and grant permission to use amplification systems on the street. This would directly address the source of noise without impinging on the right of people to perform in public spaces.
8.2.3 Update fees for temporary occupation of government land in the Land (Miscellaneous Provisions) Regulations

As noted in the study, the fees paid by restaurants to LandsD for the part-time use of government land are extremely low and have not been updated since 1976. The fees are set out in the Land (Miscellaneous Provisions) Regulations, subsidiary to the Land (Miscellaneous Provisions) Ordinance. If the Government wishes to legitimise and regulate certain commercial activities in public places to facilitate street vibrancy, it should consider charging these users to ensure that the public purse is compensated for the commercial use of public land and to deter irresponsible use. To this end, it should review and update the schedule of fees to reflect a reasonable proportion of current market prices.

8.2.4 Update outdated penalties

Many of the maximum fines and penalties laid out in ordinances concerning street management are outdated, with their deterrent effect having long been eroded by inflation. This allows those who receive fines to write them off as a cost of doing business. Nowadays, secondary penalties such as the inconvenience of having to go to court, having one’s merchandise confiscated, or being forced to close for a few days (in the case of restaurant license suspensions) often provide a greater deterrent effect than the fines. In some cases, fines are so outdated that the provisions are no longer worth enforcing. The Government should therefore review legislation to update penalties as well as repeal provisions that are no longer relevant. The Summary Offences Ordinance is a key example of outdated legislation; some of its provisions and penalties are shown in the table below.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Date</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street cries</td>
<td>1949</td>
<td>$50</td>
</tr>
<tr>
<td>Playing musical instruments without a permit</td>
<td>1964</td>
<td>$500, 3 months in prison</td>
</tr>
<tr>
<td>Causing an obstruction by exposing things for sale</td>
<td>1964</td>
<td>$500, 3 months in prison</td>
</tr>
<tr>
<td>Touting to the annoyance of others</td>
<td>1977</td>
<td>$2,000, 6 months in prison</td>
</tr>
<tr>
<td>Obstruction of public places</td>
<td>1972</td>
<td>$5,000, 3 months in prison</td>
</tr>
</tbody>
</table>
8.2.5 Clarify or assign responsibility

A common thread throughout this study is the ways in which numerous actors avoid taking responsibility for offences from which they benefit. For example, vehicle owners cannot be held responsible if their vehicles are used by others for fly-tipping and business owners deny responsibility for obstructions caused by contractors. The Government should consider reviewing relevant legislation and regulations in order to clarify responsibility. For example, the Public Cleansing and Prevention of Nuisances Regulation, subsidiary to the Public Health and Municipal Services Ordinance, currently requires the “occupier of premises” to clean any litter or waste regardless of who deposited it in the area “within 6m of any premises fronting, adjoining or abutting on such street or public place and having direct access thereto”. The FEHD can serve notice on the occupier to remove any waste on the pavement outside their building, and if they do not comply, remove the waste itself and then recover the cost from the occupier.

The Government may consider amending the regulation to additionally require occupiers to keep a certain pavement width free of any articles causing obstruction, regardless of ownership. Worldwide, several cities have rules to this effect. Third parties such as promoters and itinerant hawkers may also be required to obtain permission from the occupier before setting up on the pavement abutting a private building frontage.

Another example is the Waste Disposal Ordinance, which holds a) the driver of the vehicle at the time, or b) the driver’s employer, responsible for fly-tipping. The owner of the vehicle bears no legal responsibility. This poses problems for the EPD in identifying the responsible persons even if they can trace the vehicle ownership from its registration. The Government may consider amending the Waste Disposal Ordinance so that vehicle owners can be held responsible for fly-tipping as is the practice in the UK.

8.2.6 Provide adequate bicycle parking and promote responsible bike sharing

Currently, clearance of illegally parked bicycles is an unwieldy process involving up to four government departments. The Government may consider streamlining this through legislative amendment to empower a single department (most likely FEHD) to conduct such operations on its own as long as appropriate warnings are posted. One way this could be done is to amend the Public Health and Municipal Services Ordinance to authorise the FEHD to remove illegally parked bicycles in a manner similar to removal of unauthorised bills and posters. However, this minor fix would not address the underlying problem of insufficient bicycle parking spaces. Without further measures, more frequent enforcement may simply discourage cycling, resulting in more congestion on roads and on public transportation. The Government should continue to increase the number of public bicycle parking spaces in public transport hubs and other locations, and consider amending parking requirements in the Hong Kong Planning Standards and Guidelines to require bicycle parking spaces in private developments that are within reach of cycle paths.

While the global expansion of dockless bike share companies since 2014 has facilitated zero carbon transport, they have also forced many cities to grapple with street clutter caused by inadequate self-regulation and perverse incentives to oversupply bicycles. In the shorter term, Hong Kong can follow the example of cities such as Canberra and London by engaging with bike share companies to develop best practice guidelines. In the longer term the Government may consider passing dedicated legislation to license bike share companies in a similar manner to franchised buses.
8.3 New dedicated legislation for street management

In the longer term, the Government should consider enacting new legislation to address street management problems not covered by the current regulatory framework and to bring a more coherent management system to major pedestrianised zones.

8.3.1 Construction skips

As the study has shown, the Land (Miscellaneous Provisions) Ordinance often acts as a backstop for many kinds of street obstruction, but it is not well-suited to addressing short-term occupations by moveable objects. Construction skips are one major example. Due to unresolved jurisdictional disputes between the Transport Department and EPD and a lack of urgency, the Government has not yet implemented the Audit Commission recommendations to set up a permit system for roadside skips. Since skips fall under neither the Traffic Control Ordinance nor the Waste Disposal Ordinance, it is likely that dealing with them will require new dedicated legislation to establish a permit system, set up mandatory safety requirements, and delineate departmental responsibilities.

8.3.2 Comprehensive legislation for pedestrian zones

The root of the issues of managing pedestrianised zones in Hong Kong is that the sheer variety of activities, regulated by so many different statutes and regulations, and division of enforcement between so many different government departments, makes a unified and comprehensive approach to management nearly impossible.

It would be both impractical and unrealistic to create a unified regulatory framework governing all street activities in all public areas used by pedestrians. It would be impossible for a stand-alone agency to have exclusive oversight of pedestrian areas and exercise the powers of different government departments, including the Police, effectively.

Nonetheless, a centralised or overarching approach remains attractive due to its potential efficiency. One possible way forward may be to develop specific legislation for the management of selected major pedestrianised zones. Currently, the Public Pleasure Grounds Regulations are used to designate parks, sitting-out areas and other open spaces to be managed by the Leisure and Cultural Services Department. While the Public Pleasure Grounds Regulations have been critiqued for promoting over-management, in broad concept they can serve as a model for pedestrianised areas. The content of the regulations should be developed through public engagement in order to strike the right balance for the community, but would ideally set out a code of conduct for various actors using pedestrianised zones. It would also enable the managing authority to designate activity zones within a pedestrianised area in order to provide spaces for different uses while preserving space for pedestrian flow, such as in New York City’s Times Square. The managing authority might also be responsible for liaising and coordinating with businesses in the pedestrian zone to manage servicing activities like deliveries and waste management more efficiently.

The Government would need to appoint a body or bodies to be responsible for implementation, day-to-day management and enforcement. The Government could consider several different management models, i.e. from assigning a government...
department, to empowering DCs, to forming non-governmental associations comprised of local residents and business owners. Whatever framework is adopted should give local stakeholders the leeway to make rules that are best for their own areas – it is not necessary for every pedestrian area to be managed identically when they have different characters.

This proposal however, raises many issues that must be addressed – which in some instances may come down to the individual characteristics and preferences of each district. The management model should therefore have the flexibility for different districts to take different approaches based on public engagement and consultation with DCs.

8.4 Community discussion and local solutions

In developing new street management policies, the Government also needs to engage with the public at the district level. One recurring theme throughout this study is that different districts may have different aspirations and demand different policies or approaches. Communities should therefore have a strong say in developing street management rules and practices that are appropriate for them.

However, the existing political and administrative structure offers limited leeway for the development of local solutions. Although initiatives such as the District-led Action Scheme and local works funded by District Councils provide some scope for local decision-making, the overall framework is largely “one size fits all”. Still, the Government could do more to promote local solutions.

For example, it could encourage innovation among District Officers rather than requiring them to justify any deviation from other districts. The Government could also, as a matter of policy, give departments such as the FEHD, the Transport Department and others the flexibility to develop and implement local solutions in conjunction with District Management Committees and District Councils, even if they differ from standard practices or policies. The Government could also offer incentives and awards to District Councils for creativity in enhancing local character.

Crucially, local experimentation would be made more productive by adopting more innovative modes of stakeholder engagement in order to make better use of public feedback. The Government needs to move beyond traditional modes of public consultation that ask the public to give their views on a number of preset options. More people-centred modes of engagement, in which stakeholders are invited to engage in collaborative problem-solving and consensus-building, should be utilised. District Councils in particular need to adopt new ways of engaging with constituents in order to move beyond a complaint-driven culture in which they mainly receive negative feedback. The Government may consider providing DC members and District Officers with training and support in this regard.

Below are outlined a number of significant issues of preference and principle that should be considered by the community:
THE WAY FORWARD

8.4.1  To what extent should commercial activities be permitted in public space?
Many street management problems, from shopfront extensions to commercial touting, are different manifestations of the same phenomenon: private entities using public space to pursue profit-generating activities. To what extent should commercial activities be permitted on government land, what type of activities should be permitted, and how can the Government ensure that such activities benefit the public?

While it is argued that public spaces are for the use and enjoyment of the public and not for private profit-making, taking a hard line against all commercial activities would eliminate many services and amenities that the public enjoys, such as hawking, outdoor dining and some shopfront extensions. Where the appropriate balance lies should be subject to community discussion. Some districts may accept certain activities more than others, but in view of the limited space available and the priority of pedestrian mobility, one aspect of commercial activity that all districts are likely to agree upon is to delineate the space in which they may occur.

8.4.2  What should street users have to pay in order to occupy government land?
If commercial users are permitted to occupy pedestrianised government land, how much should they pay for it? Given the sheer variety of occupation, and the differences in the duration of the occupation depending on the activity, should all commercial users, from street photographers to shops and restaurants, be charged equally? If not, how can rates be standardised? And finally, should artistic performers who receive donations be treated as commercial street users?

8.4.3  What would a reasonable street performance scheme look like?
If a scheme to regulate street performance were implemented, the details of the scheme would need to be worked out in public consultation, e.g. the method for allocating licenses, whether to designate pitches or to use more flexible methods to spread out performers, the type and volume of performances allowed in different areas, maximum performance times, and the length of time that any performer may occupy a pitch.

These details are crucial to achieving an amenable balance between the interests of performers and the rights of local residents or workers. This issue will likely require the greatest amount of compromise – as the Mong Kok case study demonstrates, careful planning is necessary, particularly in densely built-up environments, as it is difficult to rein in activities or impose regulations ex post facto.

8.4.4  How can the Government support better street management practices?
One recurring theme in many of the street management problems identified by this study is the lack of facilities, space, management, or logistical support. For example, insufficient bicycle parking spaces, the absence of management in some private residential buildings, inadequate organisation for waste collection, lack of storage space on business premises, and insufficient lay-bys for unloading are among the issues that contribute towards street management problems. Increased enforcement alone will not address the underlying issues.

Government therefore needs to engage in dialogue with key stakeholders on how to facilitate better street management, whether through planning, providing more facilities, providing new or different services, or providing organisational or logistical support.
For example, the HAD could facilitate street-level shops to organise themselves into associations in order to collectively manage waste collection.

8.4.5 What should be done to foster more vibrant streets?

Although this study has focused mainly on improving the regulatory framework to mitigate existing street management problems, there is an equal need for programming to promote vibrancy and diversity. The Government should engage the community to discuss what kind of activities such as festivals, farmers’ markets and car-free days they would like to see more of.

The Home Affairs Department can take the lead in doing this. Some District Offices such as Central and Western’s, have already promoted programmes to use the harbourfront and other public spaces for entrepreneurship and social innovation. The Government should expand collaboration with the non-profit and academic sectors to bring more diverse interventions to streets. For example WalkDVRC, which advocates for the transformation of Des Voeux Road Central, organised a Sunday street closure in September 2016 hosting artistic, cultural, sporting and child activities, attracting 14,000 visitors. The Magic Carpet project by the School of Architecture and School of Journalism and Communication at Chinese University Hong Kong has hosted outdoor community movie screenings in several neighbourhoods throughout Hong Kong from 2013 onwards. 374

Regarding more regular activities such as hawking, shopfront extension and outdoor dining, when consulting the public and DCs on whether to permit such activities, the Government should not simply ask whether they object to nuisances but explain the potential benefits to local economies, visitor numbers, and local identity.

8.5 The need for political will

The preceding subsections lay out a number of possible solutions and issues for community discussion. To move forward with any of these approaches first and foremost requires the Government to build up the political will to do so. Policymakers need to become aware of the importance of street management – an issue previously viewed as trivial – in creating a liveable city.

In order to ensure sufficient political will, street management must be made the responsibility of a particular individual or body at a high level in Government. It is therefore strongly recommended that consider appointing a City Betterment Commissioner as a special post under the Chief Executive, or else appoint one of the bureau chiefs to take the lead among the other relevant bureaux. The Government should make its first priority to address itinerant commercial activities and street performance, the two largest and most serious gaps in street management which have the greatest impact on pedestrian zones and which present the biggest political roadblocks to further pedestrianisation efforts. Previous generations of government officials dedicated great efforts to cleaning up the streets in the process of modernising Hong Kong. Today, there is a need for renewed focus on the quality of the public realm. Making the streets comfortable, diverse and vibrant places to walk is no less important in Hong Kong’s vision to be a world-class city.
### Figure 76: Summary of major policy recommendations

<table>
<thead>
<tr>
<th>Problem</th>
<th>Recommendations</th>
</tr>
</thead>
</table>
| Silos in Government                          | • Conduct inter-bureau policy review at a high level; appoint a City Betterment Commissioner  
• Create interdepartmental street management enforcement teams  
• Reorganise and address silos within FEHD  
• Consider passing a “Management of Pedestrianised Zones Ordinance” to enable comprehensive management of pedestrianised zones. |
| Misplaced priorities                         | • Establish licensing scheme for street performers  
• Set up registration scheme for commercial promoters  
• Review definition of hawking under Public Health and Municipal Services Ordinance |
| Policies do not facilitate vibrant street uses | • Create design guidelines and streamline application process for outdoor restaurant seating  
• Establish application process for authorization of shopfront extensions  
• Consider reissuing hawker licenses which are surrendered up upon holder’s death or retirement  
• Work with local communities to organise vibrant community events, e.g. street fairs, hawker bazaars, etc. |
| Inconsistent rules on use of government land for commercial purposes | • Consider policies towards shopfront extension and outdoor dining more holistically  
• Consider land use charges for commercial promoters, bike share companies, and others. |
| Outdated legislation                         | • Review outdated land use fees under Land (Miscellaneous Provisions) Regulations  
• Review outdated provisions and penalties under the Summary Offences Ordinance |
| Inefficient enforcement procedures          | • Amend or pass legislation to deal with common unattended objects such as construction skips and bicycles, to reduce reliance on inefficient Land (Miscellaneous Provisions) Ordinance.  
• Review legislation to clarify responsibility in common situations where owners evade responsibility for offences knowingly committed on their behalf, e.g. fly-tipping, pavement obstruction. |
APPENDIX 1

Case studies of street management in Taipei and Singapore

“Managing Vibrant Streets” included several overseas examples of street management strategies in the areas of street performance and hawking, which are significant concerns in Hong Kong.

This appendix will go into further detail about Taipei and Singapore, two densely populated Asian cities which also underwent rapid modernisation in the 20th century, as Hong Kong did.

It will also examine business improvement districts (BIDs), which are a common if controversial type of public-private organisation used to manage commercial districts in many cities worldwide. While the following examples may not be directly applicable to Hong Kong, they were selected to showcase a range of approaches and solutions to provide inspiration to local decision-makers.

Street performance licensing schemes

While Hong Kong has only implemented street performer licensing schemes on a very limited scale in selected locations managed by the Leisure and Cultural Services Department and the West Kowloon Cultural District Authority, citywide street performer licensing schemes are common around the world. There are several different approaches.

Licensing requirements

Many cities impose licensing schemes on street performers. Performers are required to apply for a license, and license holders are required to abide by certain conditions and guidelines. Guidelines typically impose a number of requirements on performance times, duration of performances, size of performance groups, the number of performances allowable in a certain area, noise levels, obstruction, objectionable content (i.e. hate speech, defamatory content, obscenity), and safety. Street performers who do not comply with conditions may have their licenses revoked, in addition to being penalized under relevant laws.

Fixed pitches vs. flexible locations

Cities have varying approaches to locational requirements for street performers, ranging from no locational restrictions, to identifying specific locations for special treatment, to only allowing performances at designated fixed pitches.

Singapore only permits busking at 112 designated locations, most of them in parks. Street performers applying for permits may choose up to 8 locations in order of preference. Taipei operates a complex busking with 77 designated pitches controlled by different public and private agencies. Performers not only have to comply with general guidelines but must adhere to further requirements at each location, which are stated on the Department of Cultural Affairs website. For example, permitted noise levels vary from location to location.
Designated busking pitches in Taipei

Source: Department of Cultural Affairs, The Republic of China: Taipei Government

Auditioning

Some cities or agencies have aims beyond nuisance mitigation and seek to regulate the quality of street performances. Singapore, Taipei, Melbourne (for certain locations), and Transport for London (for tube stations) require prospective performers to audition before a panel of judges. In Taipei, audition panels consist of scholars, government representatives, managers of public space and busker agents. The public may also vote on performances. However, audition requirements can be controversial as approval depends on the subjective perception of the judges. Applicants in Taipei have complained about how difficult it is to pass auditions in Taipei, citing judges’ dismissive attitudes and idiosyncratic preferences.

Hawker policy

Like Hong Kong, many cities have grappled with how to regularise the informal economy as they modernised. Hong Kong’s approach lies between Singapore, which has moved virtually all hawking into covered hawker centres, and Taipei, which takes a more tolerant approach. However, while Hong Kong has only issued hawker licenses on a limited and ad-hoc basis since 1970, both cities have ongoing licensing schemes and plan to nurture the hawking trade into the future.
Hawker relocation – Singapore

Singapore, like Hong Kong, regarded street hawkers as a “public nuisance” due to the waste, hygiene and street obstruction problems they caused as well as outbreaks of foodborne and waterborne diseases due to unsanitary food handling practices. Starting from the 1950s, the government began to issue hawker licenses and encouraged them to move to indoor markets and shelters. However, most remained unlicensed and the relationship between hawkers and the authorities was frequently antagonistic. In 1968-69, the government carried out a mass registration exercise, which froze in place the number of licensed hawkers. Hawkers were also moved off main roads into side streets and car parks in order to free up space for vehicles. 

By the early 1970s, the Singaporean government had committed to a policy of relocating virtually all licensed hawkers to newly-built hawker centres – low-rise roofed structures which provided utilities such as electricity, water and gas, but not air-conditioning. The expansion of public housing by the Housing Development Board (HDB) was instrumental in the relocation of hawkers, as each new residential community was planned with its own hawker centre. The HDB runs over three quarters of Singaporean hawker centres today. Enforcement against unlicensed street hawking was tightened considerably, with the Hawkers Department carrying out four to five raids per day and seizing their vehicles and goods. By 1986, relocation had been completed.

Spaces in hawker centres were allocated to hawkers at both subsidised and non-subsidised rates. Subsidised rates were available only to relocated street hawkers or those who had been previously assigned stalls under hardship policy for the poor, which was discontinued in 1989. Non-subsidised stalls were allocated by tender. Singapore is in the process of gradually phasing out the subsidised stalls, which in 2014 made up 42% of the total, due to concerns about stall quality.

The relocation policy was followed by a gradual tightening of food hygiene standards within hawker centres. A demerit points system was introduced in 1987 in which repeated food hygiene violations would lead to the loss of licenses. In 1990, training and certification requirements for food handlers were imposed. In 1997, a hygiene grading system for cooked food stalls was introduced, and stallholders required to display their grades (reassessed annually) where customers could see them. Training was required for hawker centre cleaners, and public education campaigns were carried out to encourage the public to boycott unhygienic vendors.

Between 1986 and 2011, the Government ceased building new hawker centres as the attitude was that once all the street hawkers had been relocated, further hawker centres were unnecessary. However, Singaporean policymakers began to change their approach due to growing appreciation of the role of hawker centres in community life, including electioneering activities by Members of Parliament. In the early 2000s, existing hawker centres underwent renovation and upgrades. In 2011, the Government announced plans to build 10 new hawker centres to serve new population centres.
Hawker legitimisation and tolerance – Taipei

Unlike Singapore, Taipei’s government has historically taken a tolerant attitude towards hawking as it was a major source of employment for the poor. This laissez-faire approach persisted until the 1980s, by which time hawking had become a lucrative business in its own right. The Government moved to regulate hawking mainly due to lobbying by brick-and-mortar shops against what they viewed as unfair competition.390

The Taiwanese Government implemented a policy to centralize hawkers in designated locations, making them easier to manage and monitor. Subsidies were provided to local governments to construct enclosed markets, similar to Singapore’s hawker centres. The Department of Economic Developmentdesignates “temporary centralised fields” (攤販臨時集中場) for markets in areas with a high concentration of hawkers, while private developers may also submit proposals to construct and operate centralized fields.391 Similar policies have also been implemented across Taiwan from Taipei to Tainan City and Kaohsiung City.392 Not all officially sanctioned markets are located on purpose-built sites. Many, like Taipei’s Raohe Night Market are located on existing streets and back lanes which are closed to traffic during the market’s hours of operation.

Shilin Night Market, Taipei

Photo credit: Thanh Nguyen
Raohe Street during the day

The numbered boxes painted on the ground delineate plots for food stalls. Photo credit: Carine Lai

While this relocation policy bears similarities to those implemented in Singapore and Hong Kong, there are important differences. Taiwan’s overall approach has been less punitive. Despite the street management and waste collection problems caused by hawking, Taiwan’s night markets are valued as major tourist attractions and contributors to the economy. In 2010, the Control Yuan of the Republic of China (the government auditor) advised the government to change its approach towards hawkers from “controlling and banning” to “counselling and managing”. Its recommendations included passing legislation to guide local authorities in setting standards for hawker management, the delegation of management responsibilities to hawker associations, and the regularisation of unlicensed hawkers.

The delegation of responsibility to self-governing hawker associations is a remarkable aspect of Taiwan’s policy. In 2011 Taipei City amended its hawker regulations according to the Control Yuan’s recommendations, outsourcing the day-to-day management of its centralised hawker fields to hawker associations, whose duties would include firefighting equipment, lighting, waste disposal, traffic control, and mediation of vendor disputes. Hawker associations would also invest in infrastructure such as oil cleansers and pipelines. Hawker associations were authorized to charge their members cleaning and management fees, while membership in associations was made mandatory.

As space is finite, the Taipei government makes available a limited number of hawker licenses (1,781 as of 2014). Licensed hawkers are given first priority for the allocation of stalls in officially sanctioned markets. However, licenses are reserved for members of low income households, the physically disabled, people over the age of 50 with family responsibilities but no other regular employment and who have been hawking since 1984, and holders of existing licenses. Licenses cost a nominal fee (NT$300 or approx. HKD$80), must be renewed every three years, and can be passed down inter-generationally.
There is a second tier of “government-condoned hawkers” who do not possess licenses but who have applied to the government to operate market stalls in one of the centralised fields. They are entitled to certain rights and benefits provided by the hawker associations to whom they belong, but they enjoy these benefits only as long as they remain in their designated market.

The third tier consists of undocumented hawkers, who are itinerant hawkers operating illegally. They may be subject to prosecution by the police. However, they are generally tolerated as long as they do not cause major nuisance or obstruction. The Taipei government assists undocumented hawkers in need by allocating them official market stalls and by offering career counselling services.  

**Business improvement districts**

Business improvement districts (BIDs) are a type of public-private association in which business owners within a designated neighbourhood pay an additional levy which is used to fund supplementary street management services for the neighbourhood. The first business improvement district was introduced in Toronto in 1969. Since then, they have been implemented by many cities worldwide as a means of enlisting the private sector to enhance or revitalise shopping districts, especially in cities facing budgetary constraints. Toronto now has 82 BIDs. New York City has 74. There are over 290 of them across the UK.

Unlike simple business associations in which membership is purely voluntary, BIDs have statutory backing. The typical model is that a majority of businesses within an area having decided to form a BID, the local government authorizes its establishment which empowers the BID to levy a tax on all businesses located within its boundaries. In some countries such as Britain and Japan, BIDs are funded partly or wholly by the local government. Others, such as Taipei’s Ximen Pedestrian area, rely significantly on commercial funding streams like billboard advertising revenues. They are usually administered by volunteer private sector representatives elected from among member businesses, though some jurisdictions require the inclusion of government officials and residents’ representatives to varying extents. Business improvement districts are a means for the private sector to provide services and amenities over and above those normally provided by the city in order to create a more attractive business environment.

The taxes paid by businesses within a BID are used to pay for a range of supplementary services, including street cleaning, waste disposal, maintenance, security, visitor information, streetscape improvement works (e.g. planting, paving and street furniture), and tourism promotion. The private sector therefore assumes responsibility for key street management functions.

BIDs have often been successful in revitalising and enhancing shopping districts. In Taiwan, the Taipei Ximen Pedestrian Area Development Association is often viewed as a successful example for emulation. Ximen shopping district declined economically in the 1980s due to increased competition from shopping malls and department stores in other parts of the city, becoming overrun with "homeless people, prostitutes and thugs". To revitalise the district, the Taipei Government first pedestrianized it 1990. Under the
auspices of the Taipei Government, local businesses formed the Ximen Pedestrian Area Management Committee (西門徒步區管理委員會) to manage neighbourhood activities and supervise streetscape maintenance. However, lacking formal legal status, the Committee’s initial revitalisation efforts were lackluster due to conflicts of responsibility and lack of coordination between the Committee and various government departments. To address these problems, the Taipei Government passed the Taipei City Pedestrian Area Development, Management and Maintenance Act in 1994 (台北市徒步區闢建及管理維護辦法) which provided a legal basis for private sector BID associations to manage pedestrian areas, delineated respective responsibilities of the private and public sectors and established mechanisms for supervision and accountability. Separately, in the mid-1990s, Taiwan’s Council for Cultural Affairs established a nation-wide Citizen Participation Programme. This programme was applied to the Ximen, providing a means for residents to participate in its management through the Ximen Cultural Society.407

In 2000, Ximen Pedestrian Area Management Committee was retooled into the Taipei Ximen Pedestrian Area Development Association (台北市西門徒步區街區發展促進會), a formal BID with a defined funding stream (a mixture of membership dues, advertising revenues and corporate sponsorships).408

The Association assumed responsibility for street management functions such as waste collection, street cleaning, street furniture maintenance, streetscape beautification, as well as tourism promotion and event planning. The BID association developed a collaborative working relationship with the Taipei Government.410 Modeling itself on Tokyo’s Shibuya district, the Association developed the Ximen into a fashionable destination for young people by marketing the district and organising events targeted at anime fans and cosplayers.411 In 2016, there were an estimated 2.7 million shopping trips to Ximen per month, 30% of which were by tourists.412

Nevertheless, BIDs are highly controversial. They are frequently criticised for privatizing public space and turning streets into homogenous, over-managed, exclusionary spaces. For example, in cities such as San Francisco, BIDs have used private security guards to exclude or harass people deemed undesirable such as the homeless.413

BIDs have also been criticised for driving out smaller businesses by extracting levies and driving up commercial rents. Critics have called them undemocratic and unaccountable, as they grant business owners the power to make decisions affecting the public realm, including spending decisions, in which the public and smaller businesses may have little input.414

Some have also criticised BIDs in concept for exacerbating urban economic inequality by concentrating resources and investment in selected areas, and for displacing problems such as crime and vandalism to other areas outside BID boundaries.415

Given Hong Kong’s particular sensitivities over government-business collusion, it is unlikely that BIDs could be implemented at the same level. However, they do provide examples of how coordinated street management can benefit selected pedestrian areas, and may provide inspiration for more limited models of private sector contribution towards the public realm, for example through voluntary business associations to coordinate servicing activities such as deliveries and waste management.
## APPENDIX 2

### Interviewees List

In alphabetical order, by category

<table>
<thead>
<tr>
<th>Name</th>
<th>Current or former position</th>
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<tbody>
<tr>
<td><strong>District Councillors</strong></td>
<td></td>
</tr>
<tr>
<td>CHAN Wai-keung</td>
<td>Former elected Yau Tsim Mong District Councillan (2008-15), currently</td>
</tr>
<tr>
<td></td>
<td>Lecturer in the Division of Humanities, Design and Social Sciences, Hong Kong Polytechnic University.</td>
</tr>
<tr>
<td>CHENG Lai-king</td>
<td>Elected Central and Western District Councillan for Castle Road constituency</td>
</tr>
<tr>
<td>CHOW Chun-fai David, BBS, JP</td>
<td>Elected Yau Tsim Mong District Councillan for Mong Kok South constituency</td>
</tr>
<tr>
<td>CHUM Tak-shing William</td>
<td>Elected Sham Shui Po District Councillan for Lai Chi Kok North constituency</td>
</tr>
<tr>
<td>LEE Kwun-yee Kenny, MH</td>
<td>Elected Wan Chai District Councillan for Tai Fat Hau constituency</td>
</tr>
<tr>
<td>LEUNG Yau-fong</td>
<td>Elected Sham Shui Po District Councillan for Po Lai constituency</td>
</tr>
<tr>
<td>NG Yuen-ting Yolanda, MH</td>
<td>Elected Wan Chai District Councillan for Causeway Bay constituency</td>
</tr>
<tr>
<td>WONG Wai-yin Zachary</td>
<td>Elected Yuen Long District Councillan for Nam Ping constituency</td>
</tr>
<tr>
<td>WONG, Ying-kay Ada, JP</td>
<td>Former elected Wan Chai District Councillan and Urban Council member (1995-2008), currently convenor of Make a Difference and convenor and director of The Good Lab.</td>
</tr>
<tr>
<td><strong>Civil Servants</strong></td>
<td></td>
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<tr>
<td>HO Stephen K.C.</td>
<td>Senior engineer, Task Force/Walkability, Transport Department</td>
</tr>
<tr>
<td>LI, Mei-siu</td>
<td>Vice-chairperson of the Hong Kong Food and Environmental Hygiene</td>
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<td></td>
<td>Department Staff Rights Union</td>
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<tr>
<td>LUK, Kevin F. M.</td>
<td>Programme Manager (Walkability), Transport Department</td>
</tr>
<tr>
<td>NG Yu-yun June</td>
<td>Engineer, Task Force/Walkability, Transport Department</td>
</tr>
<tr>
<td>WONG Suet-Yi, Penny</td>
<td>Assistant District Officer, Central and Western District</td>
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<tr>
<td>WONG, Susanne, JP</td>
<td>District Officer, Central and Western District</td>
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<tr>
<td>YAU, Tony</td>
<td>Chief Engineer, Road Safety and Standards Division, Transport Department</td>
</tr>
<tr>
<td>Mr. A</td>
<td>Former police officer</td>
</tr>
<tr>
<td>Ms. B</td>
<td>Former civil servant at a New Territories District Office</td>
</tr>
<tr>
<td>Ms. C</td>
<td>Civil servant at an urban District Office</td>
</tr>
<tr>
<td>Mr. D</td>
<td>Former civil servant at the Transport Department</td>
</tr>
</tbody>
</table>


6. Ibid.

7. Ibid.


16. Section 11(e), Road Traffic Ordinance (Cap 374, Laws of Hong Kong).


23. The DMC is chaired by the District Officer, who is the Home Affairs Department’s highest-ranking government official at the district level. Its membership includes representatives of government departments responsible for providing local services and the heads of the District Council’s various committees.


25. The executive arms of the Urban and Regional Councils, the Urban Services Department and Regional Services Departments, respectively, had their functions centralised under the newly-formed Food and Environmental Hygiene Department and Leisure and Cultural Services Department.


27. Including the district branches of FEHD, TD, LCSD, HyD, BD, SWD, LandsD and Fire Services Department (FSD), among others.


29. Ibid.


33. Ibid.

34. The District-led Action Scheme was established in 2016 to give District Management Committees additional discretionary funding to address local needs. District Officers, with the input of District Councils, were granted the power to select several local issues it would dedicate the resources to on an annual basis. Most districts focused on 2-3 issues, ranging from street management and public hygiene to community health. See Home Affairs Department, Legislative Council Panel on Home Affairs District-led Actions Scheme: Progress Report, LC Paper No. CB(2)401/16-17(06), https://www.legco.gov.hk/yr16-17/english/panels/ha/papers/ha20161221cb2-401-6-e.pdf (accessed 10 February 2018).


40. Susanne Wong, written communication with author, 14 March 2018.


43. See Case Study 6: Mong Kok pedestrian zone – Failure of noise regulation

44. Ng, Yuen-ting Yolanda, interview with author, 24 July 2017.


46. The Planning Department had in fact consulted the public on the pedestrianisation of Kai Chiu Road as part of a pedestrian planning study for Causeway Bay in 2002-04 (see Section 1.2, “Background”), years before Ng was elected to the Wan Chai District Council in 2007.

47. Ng, Yuen-ting Yolanda, interview with author, 24 July 2017. Original quote in Cantonese: 為了遮掩在提議於被告為行人專用區的時候並沒有與其他持份者溝通，自行提出建議，但以我們觀察所得，現時並不是能草率地推出行人專用區的時間。第一，現在政府應先處理對行人專用區的定位，及在政府在解決行人專用區管理問題上是否清楚對策。在未能提供答案前，不應貿然推出行人專用區。第二，運輸署未能提供足夠數據支持相關計劃，亦沒有足夠公眾諮詢，是【零諮詢】。


50. (2005) 8 HKCFAR 229.

51. Public Order Ordinance (Cap 245, Laws of Hong Kong).

52. Or meetings of over 500 persons on private premises.

53. Processions on public highways, thoroughfares, or in public parks, or processions of more than 30 persons.

54. Section 8, Public Order Ordinance (Cap 245, Laws of Hong Kong).

55. Section 13(a), Public Order Ordinance (Cap 245, Laws of Hong Kong).

56. Sections 9 and 14, Public Order Ordinance (Cap 245, Laws of Hong Kong).

57. Sections 11 and 15, Public Order Ordinance (Cap 245, Laws of Hong Kong).

58. Offences against the Person Ordinance (Cap 212, Laws of Hong Kong).

59. Section 39, Offences against the Person Ordinance (Cap 212, Laws of Hong Kong).

60. Section 40, Offences against the Person Ordinance (Cap 212, Laws of Hong Kong).


63. Hong Kong Police Force, communication to the author, 23 January 2018. See also Section 7 on Managing Artistic and Recreational Activites.

64. Ibid.

65. Mr. A, personal communication with author, 5 July 2017.


68. Mr. A, personal communication with author, 5 July 2017.

69. See also Section 6.2.1 regarding the prohibition on display of indecent matter under the Control of Obscene and Indecent Articles Ordinance.

70. Land (Miscellaneous Provisions) Ordinance (Cap 28, Laws of Hong Kong).

71. See Section 5 on shopfront extension.


73. Flag days are days on which charities raise funds in public, typically by selling stickers in exchange for small change.
90. These include charity sales of badges, tokens, or similar articles; door to door solicitation of donations, especially in public housing estates; setting up donation boxes in stationed counters; charity rides; and passing of offering bags – Social Welfare Department, “General Charitable Fund-raising Activities”, Hong Kong: HKSAR Government, http://www.swd.gov.hk/en/index/site_pubsvc/page_controlof/sub_generalchara/(accessed 16 August 2017).
92. Summary Offences Ordinance (Cap 228, Laws of Hong Kong).
93. Hawker Regulation (Cap 132A), Laws of Hong Kong).
95. Hawker Regulation (Cap 132A), Laws of Hong Kong).
96. Gambling Ordinance (Cap 148, Laws of Hong Kong).
98. Government Lotteries Ordinance (Cap 334, Laws of Hong Kong).
99. Lands (Miscellaneous Provisions) Ordinance, (Cap. 28, Laws of Hong Kong). The letter of no objection may impose conditions on the charity, requiring them to conduct their activities at only the approved locations, to avoid causing obstruction, and to avoid damaging government property and to maintain the cleanliness and tidiness of the location. Lands Department, email communication with author, 27 September 2017.
101. Only one District Councillor, Cheng Lai-king for Central District, mentioned street-level fundraising on behalf of fraudulent or disputable charities as being a problem.
102. Summary Offences Ordinance (Cap 228, Laws of Hong Kong).
106. Mr A., interview with author, 30 June 2017.
107. Wong, Ada, interview with author, 10 July 2017. See also Section 7 below on Managing Artistic and Recreational Activities.
108. Road Traffic Ordinance (Cap 374(g), Laws of Hong Kong).
109. Road Traffic Ordinance (Cap 374, Laws of Hong Kong).
110. Road Traffic Ordinance (Cap 374(c), Laws of Hong Kong).
111. Fixed Penalty (Traffic Contraventions) Ordinance (Cap 237, Laws of Hong Kong).
112. Fixed Penalty (Criminal Proceedings) Ordinance (Cap 240, Laws of Hong Kong).
118. See Section 5 on shopfront extension.
119. Li, Mei-siu, interview with author, 1 November 2017.
120. Hong Kong Police Force, communication with author, 23 January 2018.
121. Food and Environmental Hygiene Department, email communication to author, 28 September 2017.
122. Land (Miscellaneous Provisions) Ordinance (Cap. 28, Laws of Hong Kong).


127. Ibid.


129. It is illegal to chain bicycles to railings and street furniture.

130. Bicycles may be towed either for illegal parking or for obstructing a public place.

131. Ho, Stephen, Transport Department, communication with author, 20 October 2017. Unclaimed bicycles must be auctioned through the Government Property Agency.


174. Ibid.

175. Section 6, Land (Miscellaneous Provisions) Ordinance (Cap 28, Laws of Hong Kong).


179. Ibid.


181. Summary Offences Ordinance (Cap 228, Laws of Hong Kong).


183. Ibid.

184. Land (Miscellaneous Provisions) Ordinance (Cap 28, Laws of Hong Kong).

185. Buildings Ordinance (Cap 123, Laws of Hong Kong).

186. Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap 570, Laws of Hong Kong).

187. Summary Offences Ordinance (Cap 228, Laws of Hong Kong).

188. Schedule 2, Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap 570, Laws of Hong Kong).


190. Ibid.

191. Ibid.


193. Ibid.


197. Li, Mei-siu, interviews with author, 1 November 2017 and 9 February 2017. Hawker Control officers may issue summons or hand out fines for pavement obstruction, whereas Cleansing Foremen may only ask shopkeepers not to obstruct street cleaning, and issue summons in case of non-cooperation. Additionally, the Hawker Control Team have approximately 80 frontline officers per district, are equipped with vehicles to confiscate illegally hawked merchandise, and focus exclusively on hawker enforcement. The Cleansing Section has approximately 15-20 frontline enforcement officers (Cleansing Foremen) per district, no vehicles, and other responsibilities including street cleaning, cleaning public toilets, and waste management.
198. Li, Mei-siu, interview with author, 1 November 2017.
199. Ibid.
207. The few remaining legal dai pai dongs in Hong Kong are licensed separately as hawkers as they have no brick-and-mortar premises.
210. Departments involved in vetting outdoor seating accommodation applications include Lands Department, Planning Department, Buildings Department, Fire Services Department, Transport Department, Environmental Protection Department, and Home Affairs Department.
218. Land (Miscellaneous Provisions) Ordinance (Cap 28(a), Laws of Hong Kong).


232. Ibid.


235. Ibid.


237. Zachary Wong, interview with author, 21 July 2017. Original quote: 「最後也是靠執法員[處理食肆阻街問題]，但我們也不太明白為什麼只有食肆能做到[處理問題]。其實食肆 Electrical control technician and other special skills staff are also needed in the food service industry.


241. See Section 3.1.2 on temporary hawker licenses for non-profit fundraisers.

242. Hawker Regulation (Cap 132A), Laws of Hong Kong.


244. Li, Mei-siu, interview with author, 9 February 2018.

245. Food and Health Bureau, Legislative Council Panel on Food Safety and Environmental Hygiene Subcommittee on Hawker Policy, LC Paper No. CB(4)561/14-15(01), February 2015, Hong Kong: HKSAR Government.

246. Food and Environmental Hygiene Department (2017), email communication to author, 28 September 2017.


251. Section 2, Public Health and Municipal Services Ordinance (Cap 132, Laws of Hong Kong).


255. Li, Mei-siu, interview with author, 1 November 2017.


264. Summary Offences Ordinance (Cap 228, Laws of Hong Kong).

265. Ibid.

266. Ibid.

267. Summary Offences Ordinance (Cap 228, Laws of Hong Kong).


270. Public Health and Municipal Services Ordinance (Cap 132, Laws of Hong Kong).

271. See Sections 2.3 and 3.1.4 on acquiring land licenses for electioneering and charitable activities, respectively.

272. PS Chan (for Director of Lands), Lands Department, email response to author’s enquiry, Ref no. (32)-4 in LD 108/4020/01 Pt.4, 27 September 2017.

273. PS Chan (for Director of Lands) Lands Department, email to author in response to follow-up enquiry, Ref no.: (32)-7 in LD 108/4020/01 Pt.4, 27 October 2017.

274. Land (Miscellaneous Provisions) Ordinance (Cap 28, Laws of Hong Kong).


282. "Summary Offences Ordinance (Cap 228, Laws of Hong Kong)."
283. Public Health and Municipal Services Ordinance (Cap 132, Laws of Hong Kong).
287. Li, Mei-siu, interview with author, 1 November 2017.
289. "Summary Offences Ordinance (Cap 228, Laws of Hong Kong)."
290. Mr. A, personal communication with author, 1 July 2017; Li, Mei-siu, interview with author, 9 February 2018.
298. According to urban designer Jan Gehl, activities in public spaces may be categorised as necessary, optional or social. In high quality public spaces, more optional and social activities will take place, and for longer durations — in other words, people are using streets for recreation, not just transportation. Project for Public Space, "Jan Gehl!", 31 December 2008, https://www.pps.org/article/jgehl (accessed 6 February 2008).
301. Legally, the need to obtain a Temporary Place of Public Entertainment License is not determined by the size of the event, but by whether there is a definable group of attendees. In T v. Commissioner of Police (2013), the Court of Appeal clarified that a place of public entertainment is one in which attendance can be controlled, i.e. through the setting up of a perimeter. In practice, this means organisers of larger scale, planned events which may involve the construction of temporary structures need to obtain a license, while smaller events which attract transient onlookers do not. See 4 HKLRD 384; see also T v. Commissioner of Police (2014) HKCFAR 593, where the Court of Appeal was upheld by a majority of 3 to 2 the Court of Final Appeal, Ma CJ and Ribeiro PJ dissenting.
304. Section 12(a), Summary Offences Ordinance, (Cap 228, Laws of Hong Kong).
305. Section 23, Control of Obscene and Indecent Articles Ordinance (Cap 390, Laws of Hong Kong).
306. Noise Control Ordinance (Cap 400, Laws of Hong Kong).
307. Section 3, Noise Control Ordinance (Cap 400, Laws of Hong Kong).
309. Ordinarily, in public open spaces regulated by the Leisure and Cultural Services Department, such as parks, playgrounds, sitting out areas, and barbecue sites, the playing of musical instruments or singing is prohibited unless written permission has been granted by the Director of Leisure and Cultural Services.


326. Ibid.


344. Ibid.

345. Schedule 1, Places of Public Entertainment Ordinance (Cap 172, Laws of Hong Kong).

346. Places of Public Entertainment Ordinance (Cap 172, Laws of Hong Kong).


350. Summary Offences Ordinance (Cap 228, Laws of Hong Kong).


353. Wong, Susanne, written communication with author, 14 March 2018.


361. Ibid.


363. MOUs have been used elsewhere in government to coordinate regulatory responsibilities between different bodies. For example there is an MOU between the Mandatory Provident Fund Schemes Authority, the Hong Kong Monetary Authority, the Securities and Futures Commission, and the Insurance Authority to regulate Mandatory Provident Fund intermediaries. See Insurance Authority, Monetary Authority, Securities and Futures Commission and Hong Kong Monetary Authority, Memorandum of Understanding Concerning the Regulation of Regulated Persons With Respect to Registered Schemes Under The Mandatory Provident Fund Schemes Ordinance, 28 May 2013, Hong Kong: HKSAR Government, http://www.hksma.gov.hk/media/eng/doc/key-functions/banking-stability/banking-policy-and-supervision/MPF_MOU_20130528.pdf (accessed 9 February 2018).

364. Past budget cuts replaced frontline FEHD staff with contracted cleaners who do not have the ability to enforce laws against littering and other hygiene-related offences. Chum Tak-shing, interview with author, 15 August 2017.


366. According to the Environmental Protection Act of 1990, in the UK, vehicle owners are treated as responsible for fly-tipping “whether or not he or she gave any instructions for this to be done”. Local authorities may also seize vehicles reasonably suspected of being used for fly-tipping. See Priestly, S., Fly-tipping - the illegal dumping of waste, Briefing Paper No. CBPO5672, 21 June 2017, United Kingdom: Parliament UK, http://researchbriefings.files.parliament.uk/documents/SN05672/SN05672.pdf (accessed 10 February 2018).


381. Ibid.


383. Ibid.


386. Ibid.


388. Ibid.


391. Technically, the "temporarily centralised fields" are supposed to have operating period of three years, but in fact are repeatedly reauthorized by the government.

392. Tainan City Market Administration Office, “健康臨時攤販集市場攤販設施類便民設施管理條例” (Chinese only); Kaohsiung City Government, "暫時規範臨時市場攤販設置" (Chinese only) (accessed 6 July 2017).


396. Ibid.

397. Ibid.

398. Ibid.


407. Ibid.


410. Ibid.


412. Ibid.


