

**Extract of minutes of meeting of the
Panel on Food Safety and Environmental Hygiene
held on 8 January 2001**

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I. Proposal to strengthen the control on unlicensed and unhygienic food establishments

[LC Paper No. CB(2) 628/00-01(01)]

Mr WONG Yung-kan said that Members belonging to the Democratic Alliance for Betterment of Hong Kong supported the current proposal to strengthen the control on unlicensed and unhygienic food establishments for the protection of public health. He welcomed the proposal of shortening the closure process from nine months to about one and a half months, and asked about the legislative timetable for implementing the proposal. Deputy Secretary for the Environment and Food (DS(EF)) replied that the Administration aimed at introducing the relevant legislative amendments to the Legislative Council (LegCo) in the first quarter of 2001.

2. Mr Albert HO expressed support for the policy direction of the legislative proposal which aimed to provide a simpler and faster closure procedures to tackle the problem of unlicensed or unhygienic food premises. However, he expressed concern about the appeals mechanism and asked why appeals against the decision of the Director of Food and Environmental Hygiene (DFEH) to close a food establishment should be lodged to the court instead of the Licensing Appeals Board. He considered that the latter should be more convenient and less expensive to appellants. He was of the view that the court should only review decisions made by the Licensing Appeals Board.

3. DS(EF) responded that under the proposal, the Magistrate's Court could arrange early hearings on the appeals and the time required would even be shorter than that for Licensing Appeals Board. DFEH explained the procedures under the proposal. She said that DFEH would still have to apply for a Closure Order from the Magistrate's Court to close unlicensed food establishments. As regards unhygienic food establishments posing an immediate health risk to the public, the closure order would be made by DFEH personally based on the assessment of a Medical Officer confirming the poor hygiene conditions of the establishment concerned, without recourse to court proceedings. The power would not be delegated and DFEH would be wholly accountable for his/her decision.

4. On the appeal mechanism, DFEH said that presently an operator of a food establishment had 28 days to make representation to the Licensing Appeals Board. As the Closure Order could not be enforced once the operator had lodged an appeal to the

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Board, the operator could then take advantage of the time in between to change hands. This had rendered the closure process ineffective. To close the loophole, the present proposal was that the Closure Order would be executed seven days after posting the notice of intention. If any person was aggrieved by the Closure Order, he/she could lodge an appeal to the Magistrate's Court within seven days. The arrangement was to ensure that the closure process would not be protracted due to the appeal process.

5. Mr Albert HO said that since hearings of these appeal cases often involved examination of expert evidence, it seemed more appropriate for such cases to be dealt with by a higher level of court than a Magistrate's Court. He pointed out that the Chairman of the Municipal Services Appeal Board was also a judge of the first level Court. DFEH noted the suggestion.

6. Mr LAU Kong-wah expressed support for the legislative proposal. Referring to paragraph 11 of the Administration's paper, he said that the circumstances under which a food establishment might be subject to a closure order were wide-ranging, and food premises might easily be caught under the new provisions. He also cited the use of water by food premises in rural areas from sources other than those approved by the Water Supplies Department. He asked whether the Administration had a rough estimate on the number of food establishments which would fall within the circumstances described in paragraph 11 of the paper, and what measures would be put in place to prevent abused use of DFEH's power to order immediate closure of a food establishment.

7. DFEH stressed that the food supplied by food establishments must be clean and fit for public consumption and this principle could not be compromised. She said that if a food premise was not even provided with tap water, it was unsuitable for use as a food establishment and would not be granted a licence. She added that it was the community's expectation that Government should take more stringent enforcement actions against food premises which would pose immediate health hazard to the public. She assured members that DFEH would exercise the power personally, and only when there was adequate evidence to substantiate the claim that a particular food establishment posed an immediate health hazard to the public and warranted immediate closure. She added that any person who was aggrieved by the Closure Order could appeal within seven days to the Magistrate's Court against DFEH's decision.

8. Mr LAU Kong-wah said that there was no approved water supply in some 20 villages in Hong Kong. He asked whether it would mean that all the food establishments in these villages could not operate. DFEH replied that FEHD would not issue a food business licence to any premises not provided with tap water from an approved source, but premises selling pre-packaged food ready for immediate consumption were not subject to such requirements.

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9. In response to Mr James TO, DFEH confirmed that food premises should not use stream water for food preparation and it would constitute a breach of the law for doing so.

10. The Chairman asked how a Closure Order would be executed and whether special arrangements would be made for food premises that were also used for human habitation. DFEH said that the food premises subject to a Closure Order would be locked and the water and power supply would be disconnected. However, the department would be extremely careful in executing a Closure Order on food premises which were partly used for human habitation. In these cases, the enforcement staff would only lock the area which was used for food preparation and food business. The department would also advise the owner of the premises of the breach of law. She added that a Closure Order must specify in what way the use of the premise concerned was in contravention of the law or the authorized land use. She emphasized that the owner of the premises or the Food and Environmental Hygiene Department (FEHD) could apply to the court to rescind the Order if the premises were no longer subject to unlawful use, or the health hazard posed by the premise concerned had been eliminated.

11. As regards food processing in open space or backyards, DFEH said that such operation could be prosecuted under relevant ordinances, depending on the degree of health hazard posed to the public and individual circumstances of each case. The Department would also consider factors such as whether the operator had applied for a licence or had any intention to comply with the licensing requirements.

12. Mr WONG Sing-chi asked about the situation where the operator of the food premises ceased business in order to apply to the court to lift the Closure Order but then re-open again without a licence. He asked whether more stringent actions would be taken against repeated offenders in these cases. Mr WONG further said that where the food establishment had changed hands, the new operator could be granted a provisional licence for carrying out business in the same premises. Mr WONG asked how the Administration would ensure that such food premises would comply with the food safety requirements.

13. DFEH responded that closure of food premises was already a very severe penalty to the operator. The Department would take prosecution action against repeated offenders and the Court would make reference to past offence records. However, as Closure Orders were issued for a temporary period, it would not be possible or reasonable to transfer the liability of the previous operator to the new operator. She said that the Department would not disallow any lawful business to be carried out in these premises. She considered that the proposal to empower DFEH to apply for a Closure Order to close unlicensed food establishments without having to obtain a Prohibition Order and to immediately close unhygienic food establishments would provide sufficient deterrence. The Administration would review the situation to

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see if more stringent measures would be necessary after implementation of the proposal.

14. Mr James TO commented that if the operator of the food establishment had not even applied for a food business licence, the Administration could consider taking immediate prosecution action if this was quicker than applying for a Closure Order. He also suggested that the Administration should make reference to the control of vice establishments and take action against the owner of premises that were repeatedly leased for operating food establishments without licence. The Administration noted the comments.

15. In view of the long time required for processing applications of food business licences, Mr IP Kwok-him asked whether the proposal to close unlicensed food premises would create unnecessary burden to those members of the trade who were willing to apply for a licence and comply with the licensing requirements. DFEH responded that the Administration fully recognized the need to shorten the process for issuing food business licences. She said that the Administration had already introduced a series of improvement measures to streamline the process, and the letter of requirements for provisional licence could now be issued in 20 working days. On the time required to issue a full licence, DFEH said that it would depend on when the applicant could provide all requisite certificates of compliance. She said that the operators issued with a Provisional Licence would still need to comply with the safety and hygiene requirements. If such establishments were found in breach of the licensing and statutory requirements, action could be taken against the operator, including the issue of a Closure Order if the hygiene conditions seriously deteriorated as to pose an immediate health hazard to the public.

16. Mr IP Kwok-him asked whether the Administration could give any assurance that the proposed closure procedures aimed at those food establishments which were unable to meet the basic requirements for a licence rather than those which were already issued a provisional licence. DFEH assured members that a closure order would not be issued to those food premises which followed the conditions set out in the letter of requirements for a provisional licence. She reiterated that DFEH would exercise her power to issue a Closure Order very carefully and the decisions made in this regard could stand up to legal challenge. She said that the Department would clearly explain to the trade the implementation of the proposal and that there would not be any abuse of power.

17. Mr Tommy CHEUNG said that the catering industry was very concerned about the difficulties that might create to the trade especially when the operator had made a lot of efforts in applying for a food business licence. He said that whilst Government had introduced measures to streamline the licensing procedures, the trade had not found it easier or quicker to obtain a licence under the new procedures. Given the long time required for the issue of a licence, the trade was worried that food establishments which started operation while awaiting the issue of licences might also

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be subject to Closure Orders under the proposal. DFEH reiterated that FEHD pledged that all licence applications were dealt with expeditiously and that all applications must satisfy the food safety and hygiene requirements. The Department would assist the genuine traders in the licensing process and the Kowloon Licensing Office of FEHD now provided one-stop service on matters relating to licence applications.

18. Referring to paragraph 11 in the paper, Mr Tommy CHEUNG said that the circumstances described therein were too general and could lead to abuses. He considered that the issue of Closure Order must be based on objective evidence such as laboratory tests that the food prepared in the food premises concerned had been contaminated or tainted. He also expressed concern that infestation of vermin would be one of the circumstances that might warrant immediate closure of the food premises, as the vermin problem might be caused by other premises in the vicinity.

19. DFEH explained that there would be sufficient safeguards against abuse of power. The issue of a closure order would be based on circumstantial evidence and professional judgment including the Medical Officer's report and laboratory test findings. Any person who was aggrieved by the Closure Order could appeal to the court. She added that the Administration would further discuss with the trade the implementation details.

20. DS(EF) added that in the case of closing an unlicensed food establishment, DFEH would still have to apply to the court for the issue of a Closure Order. The power for DFEH to immediately close food premises would only be limited to those unhygienic premises where DFEH had sufficient cause to believe that public health was under serious threat.

21. Mr Tommy CHEUNG said that he still had reservations about descriptions such as "may have been contaminated" and "likely to be contaminated" in paragraph 11 of the Administration's paper.

22. The Chairman requested the Administration to take note of members' comments in introducing the legislative proposal into the Council.

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