

立法會
Legislative Council

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LC Paper No. CB(2) 767/02-03
(These minutes have been seen
by the Administration)

LegCo Panel on Food Safety and Environmental Hygiene

Minutes of meeting
held on Wednesday, 20 November 2002 at 8:30 am
in Conference Room A of the Legislative Council Building

Members present : Hon Fred LI Wah-ming, JP (Chairman)
Hon Tommy CHEUNG Yu-yan, JP (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon CHAN Yuen-han, JP
Hon WONG Yung-kan
Hon Andrew CHENG Kar-foo
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok

Member attending : Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP

Members absent : Hon James TO Kun-sun
Hon WONG Sing-chi

Public Officers Attending : **Item IV**

Mrs Ingrid YEUNG
Acting Deputy Secretary (Food and Environment Hygiene)
Health, Welfare and Food Bureau

Mr Edward LAW
Principal Assistant Secretary (Food and Environmental Hygiene)
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

Mr W H CHEUK
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Dr S P MAK
Deputy Director (Food and Public Health)
Food and Environmental Hygiene Department

Ms Rhonda LO
Assistant Director (Operations) 3
Food and Environmental Hygiene Department

Items V & VI

Mrs Ingrid YEUNG
Acting Deputy Secretary (Food and Environment Hygiene)
Health, Welfare and Food Bureau

Mr Edward LAW
Principal Assistant Secretary (Food and Environmental Hygiene)2
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

Mr W H CHEUK
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2)5

Staff in Attendance : Ms Joanne MAK
Senior Assistant Secretary (2)2

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I. Confirmation of minutes of meetings

[LC Paper Nos. CB(2) 217/02-03, CB(2) 251/02-03, CB(2)393/02-03 and CB(2) 395/02-03]

The minutes of the following meetings were confirmed -

- (a) regular meetings on 16 September and 22 October 2002;
- (b) special meeting on 2 October 2002; and
- (c) joint meeting with the Panel on Health Services on 22 October 2002.

II. Date of next meeting and items for discussion

[LC Paper Nos. CB(2)390/02-03(01) and (02)]

2. The Chairman reminded members that the next regular meeting had been re-scheduled to 19 December 2002 at 8:30 am. Members agreed to discuss the following items at the next meeting -

- (a) Follow-up discussion on the Report of the Investigation Team for the 2002 Avian Influenza Incident; and
- (b) Follow-up discussion on problems relating to the supply of pork.

Acting Deputy Secretary (Food and Environment Hygiene) (DS(FEH)(Atg)) undertook to provide the report of the Competition Policy Advisory Group to the Panel once it was available.

III. Information paper(s) issued since last meeting

[LC Paper No. CB(2)407/02-03(01) and LC Paper No. IN 04/02-03]

3. Members noted that the following information papers had been received since the last regular meeting -

- (a) the Administration's paper on extension of public market rental freeze; and
- (b) an information note prepared by the Research and Library Services Division of the LegCo Secretariat on "Health regulations for the import of food in South Korea".

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IV. Follow-up discussion on the importation of chilled chickens from the Mainland

[LC Paper No. CB(2) 407/02-03(02)]

4. The Chairman informed members that Mr WONG Chun-kow of the World's Poultry Science Association Hong Kong Branch had sent him a note raising some questions on the importation of chilled chickens from the Mainland. The note was tabled at the meeting for members' information.

(*Post-meeting note* : The note from Mr WONG Chun-kow was subsequently issued to members vide LC Paper No. CB(2) 442/02-03 dated 21 November 2002.)

Discussion

Chinese translation of the term "chilled chickens"

5. Mr WONG Yung-kan considered that the Chinese translation of "chilled chickens" should be "冷凍雞" instead of "冰鮮雞". He criticised that the term "冰鮮雞" was misleading to the public who might think that chilled chickens were also fresh ones.

6. DS(FEH)(Atg) said that as she had explained at previous meetings, "冷凍雞" referred to chickens which were required to be kept at a temperature between 0°C to 10°C, while "冷藏雞" were required to be kept at -18°C or below. She further said that the Administration had previously referred to chilled chickens as "冷凍雞" but some Panel members commented that it was confusing and would easily be mistaken as "冷藏雞", and these members had indicated a preference for the term "冰鮮雞" which was already commonly used by the public.

7. Mr WONG Yung-kan considered that the Administration should stick to the Chinese term provided in the law and call chilled chickens "冷凍雞" in Chinese. Mrs Selina CHOW expressed a similar view.

8. DFEH responded that the general public and the media sometimes preferred to use terms other than those provided in law, for example, "酒樓" was commonly used instead of "食物業處所". He was worried that it would cause greater confusion if the Administration reverted to use "冷凍雞" as the Chinese term for chilled chickens, as the public was already accustomed to the term "冰鮮雞".

Differentiation between freshly slaughtered chickens and chilled chickens

9. Mr Michael MAK said that some overseas countries had the practice of removing the heads and necks of the chilled chickens before they were released for sale in the market. He pointed out that the chicken trade in Hong Kong had also

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strongly requested for imposing similar requirements to facilitate differentiation of chilled chickens from the freshly slaughtered chickens. He asked why the Administration had insisted not to impose such a requirement for chilled chickens.

10. Deputy Director (Food and Public Health) (DD(FPH)) explained that the Codex Alimentarius Commission (CAC) of the United Nations was the authority that laid down international standards for food safety and hygiene. She said that according to the Code of Hygiene Practice for Poultry Processing recommended by CAC, there was no such a mandatory requirement that chilled chickens must have their heads and claws removed for sale. Therefore, the Administration considered that there were no scientific grounds from the public health point of view to make the removal of heads and necks of chilled chickens a mandatory import requirement.

11. DD(FPH) further said that the Administration's proposal of putting a red stamp near the wing area of the chilled chickens would effectively address the concern about the need to differentiate chilled chickens from those freshly slaughtered. She added that if importers so wished, they could request the exporters to remove the heads and necks of the chilled chickens before they were imported into Hong Kong.

12. Mr MAK said that the Administration should seriously consider the request of consumers who were largely in support of imposing the requirement of removing chilled chickens' heads and claws. Director of Food and Environmental Hygiene (DFEH) responded that at the Panel meeting on 2 October 2002, representatives of the Consumer Council had pointed out that there were consumers who wanted to buy whole chickens for ancestral worship purposes. He added that if customers really wanted to have the chilled chickens' heads and claws removed, market forces could make this happen.

13. Mr WONG Yung-kan disagreed that the suggestion of removing the heads and claws of chilled chickens should not be pursued just because some consumers might wish to buy whole chickens to pay tribute to the deity and ancestors. He said that few people would use chilled chickens for such purposes.

14. Mr WONG Yung-kan said that the local chicken industry was not opposed to the importation of chilled chickens. However, it was of the view that adequate measures should be put in place to enable consumers to differentiate chilled chickens from those freshly slaughtered.

Sanitary requirements for chilled chickens in overseas countries

15. In response to Mr WONG Yung-kan, DD(FPH) said that although the United States and Australia had the requirement of removing heads and necks of chilled chickens, there was also an exemption mechanism to provide for the sale of chilled chickens with their heads and necks. DD(FPH) further said that there was also no such requirement in the European Union, New Zealand and Singapore. She pointed out that there were no standard specifications for the sale of chilled chickens in

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overseas countries as these depended on the needs and local dietary habits of individual places. She said that the Administration was of the view that it was more objective to make reference to the CAC standards for poultry processing in stipulating import requirements for chilled chickens.

16. Mr WONG suggested that the Administration should obtain more information, for example, the proportion of, and the reasons for, retailers in the United States and Australia to apply for exemption to sell chilled chickens with their heads and necks retained. DFEH expressed reservations about the usefulness of such information because the dietary habits of Americans and Australians were different from that of Hong Kong people.

Health risk constituted by the retention of the heads and necks of chilled chickens

17. Mr Tommy CHEUNG recalled that a deputation had earlier expressed the view that the "crop" of a chicken carried a high load of bacteria, and the deputation expressed support for the removal of the heads and necks of chilled chickens. Mr CHEUNG said that the Administration's view that "heads and necks of chilled chickens do not constitute a particularly high risk in terms of food safety and public hygiene" in paragraph 3 of its paper seemed contradictory to the deputation's view. The Chairman added that the deputation had also expressed concern about the possibility of cross-contamination during the water chilling process when all the chickens were soaked in the water of the same chilling tank.

18. DD(FPH) said that the Administration had studied the information provided by the deputation. With the aid of a plastic model showing the cross-section of the entrails of a chicken, DD(FPH) explained that the "crop" was not located in the neck, but was actually in the body of a chicken. She said that the "crop" would be removed altogether with the viscera during the processing.

19. DD(FPH) further explained that a series of measures had been put in place to ensure the hygiene standard of the chilled chickens, therefore the Administration did not consider that the heads and necks of chilled chickens would constitute "a particularly high risk in terms of food safety and public hygiene". She said that only those chicken farms and processing plants which had been registered with the Mainland's inspection and quarantine authority could export chilled chickens to Hong Kong. She further said that there would be a trained veterinary surgeon in each of the farms responsible for the prevention and management of disease among chickens. It was also required that there should be no occurrence of highly pathogenic avian influenza at the poultry farm which supplied live chickens to the processing plant for slaughtering during the six months before the live chickens were delivered out of the farm.

20. DD(FPH) further said that when the live chickens were delivered to the plant, the resident veterinarian would check the relevant certificates issued by the inspection and quarantine authorities, and inspect the live chickens before they were sent for

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slaughtering. Only healthy chickens would be slaughtered, and the carcasses and offal of chilled chickens would be packaged separately. These arrangements should have addressed members' concern about any risk which might be posed by the offal of chilled chickens. She added that details of the inspection and quarantine requirements for chilled chickens imported from the Mainland had been set out in the Administration's paper [LC Paper No. 2769/01-02(04)] provided for the Panel meeting on 16 September 2002.

Proposal of putting red stamps near to the wing area of the chilled chickens and other identification measures

21. Mr Tommy CHEUNG asked whether the ink used for the red stamp to be applied onto the chilled chickens was edible. He also asked whether the red stamp was still visible after cooking.

22. DD(FPH) said that the colours used was edible and colourfast. It would still be visible even after a chicken had been cooked, unless the red stamp was covered with marinades such as soya sauce.

23. Mrs Selina CHOW asked about the size of the proposed red stamp and whether it was easily identifiable by consumers. DFEH replied that the red stamp was of the size of about a five-cent coin and was easily identifiable.

24. In response to Mrs CHOW, DFEH said that the Administration had proposed the following identification measures -

- (a) putting the red stamp near to the wing area of the chilled chickens;
- (b) requiring carcasses of chilled chickens to be individually packaged; and
- (c) sticking a security hologram to the packaged chilled chickens.

He further said that if the packaging of a chilled chicken and its security hologram had been removed, consumers should still be able to identify that it was a chilled chicken by its external characteristics, such as the colour of the cut at throat and the temperature of the carcass.

Inclusion of "slaughtering date" on labels

25. In response to the Chairman, DD(FPH) confirmed that the Mainland processing plants which would be supplying chilled chickens to Hong Kong had agreed to include "production date" on the package labels of chilled chickens.

26. Referring to the labelling requirements in paragraph 2.14 of the Information Note entitled "Health regulations for the import of food in South Korea" (IN04/02-03), Mr WONG Yung-kan asked whether the Administration would apply similar labelling requirements to the packaged chilled chickens for sale in Hong Kong.

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27. DFEH said that the labelling requirements currently stipulated in the relevant legislation also applied to the imported chilled chicken, and many of these requirements were similar to those applied in South Korea. He further said that it would involve amending the law if additional labelling requirements were to be imposed on chilled chickens. He also informed members that the Administration would discuss with the Panel in early 2003 about nutrition labelling of food products.

Sale of chilled chickens at retail outlets

28. In response to Dr LO Wing-lok, Assistant Director (Operations) 3 (AD(Ops)3) said that at present there were 847 fresh chicken market stalls and 1 580 fresh provision shops which could also sell chilled chickens if they obtained the permission of the Food and Environmental Hygiene Department (FEHD). She further said that so far some 400 applications had been received from these retail outlets for permission to sell chilled chickens, and a few dozens of them had been approved. In response to Dr LO's further enquiry, AD(Ops)3 briefed members on the licensing requirements for the sale of chilled chickens at retail outlets, which were set out in Annex 2 to LC Paper No. 2769/01-02(04).

29. Dr LO expressed concern that defrosted frozen chickens might be posed as chilled chickens for sale in some retail outlets. He suggested that consideration could be given to requiring frozen chickens for sale in Hong Kong to have their heads and claws removed to facilitate differentiation. DD(FPH) replied that there was no such requirement in the existing legislation. She further said that with the proposed identification measures for chilled chickens, there should not be problems in differentiating chilled chickens from frozen chickens.

30. DS(FEH)(Atg) supplemented that existing legislation allowed the sale of defrosted poultry, subject to the condition that it had to be stored and displayed under ventilated conditions at a temperature not exceeding 4°C. Moreover, the description of the defrosted chickens should be factually correct, e.g. "previously frozen" or "just thawed". She said that given the higher costs for producing and storing frozen chickens, there should be no incentives for retailers to pose frozen chickens as chilled chickens for sale.

Enforcement

31. Mrs Selina CHOW expressed concern about the enforcement of the import control and the licensing requirements for the sale of chilled chickens. She asked what actions the Administration would take to deal with those retail outlets which posed chilled chickens as freshly slaughtered ones for sale. DFEH replied that FEHD officers would take actions against those retail outlets under section 125 of the Public Health and Municipal Services Ordinance (Cap.132). DFEH added that FEHD would step up its enforcement and consider imposing stricter penalties to enhance the deterrent effect.

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32. Mrs Selina CHOW queried whether there was any legal backing for DFEH to impose additional licensing requirements and conditions in respect of licences which had already been issued to the fresh provision shops and market stalls. AD(Ops)3 replied that DFEH was empowered under Cap. 132 to impose licensing requirements and conditions in respect of food business licences as he deemed fit for the purpose of carrying out the objects of Cap.132. She said that, for example, following the avian influenza outbreak in May 2001, additional licensing requirements and conditions on poultry retail outlets had been introduced, and the 25th day of each month had also been designated as the rest day for all poultry retail outlets to enable thorough cleansing and disinfection work to be carried out.

33. Mr Tommy CHEUNG asked about the measures the Administration would take to prevent smuggling of chilled chickens. DD(FPH) responded that the Administration would examine the health certificates of each consignment of the chilled chickens at the border control point. In addition, FEHD would step up collaboration with the Customs and Excise Department (C&ED) and, where necessary, conduct joint operations with C&ED to combat smuggling of chilled chickens.

34. Mr Tommy CHEUNG further asked about the measures the Administration would take against those wholesalers or retailers who sold chilled chickens without permission or sold smuggled chilled chickens. AD(Ops)3 replied that FEHD would strengthen intelligence collection and inspection of retail outlets to ensure that retailers complied with the licensing and tenancy requirements. FEHD would also take enforcement actions against such activities would include revocation of licence and termination of tenancy.

Consultation with the local poultry trade

35. Mr WONG Yung-kan said that the Administration had earlier undertaken that before chilled chickens were imported from the Mainland, it would first consult the local poultry trade on the relevant arrangements. He expressed dissatisfaction that the Administration had failed to consult the trade before announcing that the importation of chilled chickens from the Mainland would start in December 2002.

36. AD(Ops)3 said that the Administration had been maintaining close contact with the local poultry trade. So far, 14 meetings had been held with the poultry trade since May 2001 to discuss issues including measures to control the spread of avian influenza, and the importation and retail sale of chilled chickens. She added that the Administration had provided the trade with the draft licensing requirements/tenancy conditions relating to the storage and display of chilled meat for comments before implementation. Their views had been taken into account by the Administration in finalising the licensing requirements/conditions.

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37. Miss CHAN Yuen-han commented that since the trade had strong views on the importation arrangements, the Administration should continue to discuss with the trade. She said that it was important for the Administration to have the cooperation of the trade. The Chairman asked when the last meeting was held with the trade for discussion of the importation of chilled chickens, and whether the trade had been consulted on the proposal of putting red stamps near to the wing area of the chilled chickens.

38. AD(Ops)3 replied that the last meeting was held on 14 June 2002 at which representatives of the poultry trade had been provided with the draft licensing requirements/tenancy conditions. She said that since that meeting, the Administration had been maintaining dialogue with the trade representatives on the identification measures required for the chilled chickens.

39. Miss CHAN Yuen-han considered that the Administration should hold a further meeting with the trade as soon as possible since the last meeting was held a long time ago. The Chairman said that the Panel had all along stressed that the Administration should consult the trade on the detailed importation arrangements for chilled chickens before implementation. He expressed regret that the Administration had not convened any meeting with the trade after 14 June 2002.

40. In response to the Chairman's remarks, AD(Ops)3 clarified that when the licensing requirements/tenancy conditions were drawn up and issued to the traders in September 2002, the Administration had conducted a briefing session with the trade representatives, followed by face-to-face discussion with the market stall holders and licensees of the fresh provision shops. DFEH added that the Administration had also listened to the views of the representatives of the poultry trade at the special meeting of the Panel on 2 October 2002. He said that the current proposal of putting red stamps near to the wing area of the chilled chickens were drawn up having regard to the views of the trade representatives.

(Post-meeting note : According to the Administration, the briefing to the trade representatives was held on 27 September 2002.)

41. The Chairman requested the Administration to meet with the representatives of the trade as soon as possible, as they had strong views about having the heads and claws of the chilled chickens removed. DFEH said that the Administration would further meet with representatives of the trade, after briefing the Panel at this meeting, to explain to them the proposal of putting red stamps near to the wing area of the chilled chickens.

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(Post-meeting note : According to the Administration, FEHD held two meetings with the trade representatives on 20 and 26 November 2002. Two briefing sessions open to all traders were also organised on 2 December 2002.)

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V. Policy on the issue of Food Factory (Meat Roasting) Licence
[LC Paper No. CB(2)390/02-03(03)]

42. The Chairman said that the owners' corporation of a residential building in Shau Kei Wan had lodged a complaint with the Legislative Council Duty Roster Members (DRMs) against the environmental and hygiene problems created by a pig roasting factory. Members had requested the Administration to consider whether this kind of food factories should be allowed to operate in densely populated areas having regard to the environmental and hygiene problems posed by their operation.

43. Mr Michael MAK expressed concern about the regulatory control of the transportation of roasted meat. He said that very often, the roast pigs/meat were carried on a bicycle or a trolley without being properly covered, and were exposed to dust and dirt during the transportation. He asked about the number of complaints received by FEHD in this regard, and whether prosecutions had been taken against such cases.

44. Deputy Director (Environmental Hygiene) (DD(EH)) replied that the transportation of cooked food was also subject to regulatory control as it should be properly covered. He said that 44 and 31 prosecutions were taken respectively in 2000 and 2001, and so far 20 prosecutions had been taken in 2002 in this respect. He added that between January 2000 and October 2002, FEHD had received 13 complaints on average about environmental nuisances caused by meat roasting factories each year.

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45. At the request of the Chairman, DD(EH) agreed to provide information to explain the present legislation for the regulation of food delivery and the cases dealt with in this respect.

46. Referring to paragraph 5 of the Administration's paper, Mr WONG Yung-kan asked how many of the 39 complaints received by FEHD had been prosecuted. DD(EH) replied that the Administration would take prosecution only if the operator failed to make improvements after being warned.

47. Mr WONG Yung-kan asked why the Administration proposed new requirements on meat roasting food factories if the environmental hygiene problems caused by these food factories were not acute. DD(EH) explained that the proposal was put forward in response to the views expressed by the Duty Roster Members to improve the present policy on the issue of food factory (meat roasting) licences. He said that there were at present 152 licensed meat roasting factories in Hong Kong and this should be sufficient to meet consumers' demands for roast meat. It was therefore proposed that in future, licences should only be issued to premises where the carrying out of meat roasting was compatible with the terms of the relevant land lease and outline zoning plans. The same requirements would also be strictly applied to applications in respect of existing premises which had once been used as meat

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roasting food factories but had ceased operation for some time before re-applying for operating meat roasting again.

Admin

48. The Chairman requested the Administration to provide a paper to the Panel on the outcome of its consultation with the trade on the current proposal. DD(EH) agreed.

VI. Follow-up discussion on the regulatory control of "private kitchens"
[LC Paper Nos. CB(2)390/02-03(04) and (05)]

49. DD(EH) said that the Administration recognised the economic benefits brought about by "private kitchens", such as providing employment opportunities, promoting tourism and enhancing consumers' choice of dining places. The Administration therefore planned to allow existing operations to continue provided that they could meet the proposed regulatory requirements set out in paragraph 5 of the Administration's paper.

50. DD(EH) further said that some media reports had commented that the proposed regulatory requirements for "private kitchens" were too stringent. DD(EH) explained that the Administration had to balance the interests of the patrons and those of the neighbours of "private kitchens". The Administration was of the view that "private kitchens" should be allowed to operate as a restricted practice provided that they observed the essential public health and safety requirements.

51. DD(EH) said that the Administration welcomed views and comments from Members and the general public on the proposed regulatory framework. The Administration would fine-tune the proposals before they were presented for consultation with the trade and other parties concerned.

Discussion

Legal framework for the proposed regulatory control

52. In response to the Chairman, DFEH said that the Administration was initially of the view that legislation would have to be introduced for putting in place a regulatory framework for "private kitchens" and to set out the registration requirements. He explained that at present, there were no provisions for such food establishments as "private kitchens" in legislation.

Chinese name of "private kitchens"

53. Mr Michael MAK asked whether the Administration would provide a more proper Chinese name for "private kitchens" .

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54. DD(EH) responded that when legislation was introduced to provide for a regulatory framework for "private kitchens", consideration would be given to providing an appropriate Chinese term for "private kitchens". He commented that the present Chinese term "私房菜館" had been commonly used by the general public and the media. Mr MAK suggested that the Administration might consider holding a contest for an appropriate Chinese name for "private kitchens". The Administration noted the suggestion.

Comments on the proposed regulatory framework

55. Miss CHAN Yuen-han considered that the proposed regulatory framework was too stringent and would drive many existing "private kitchens" out of business. She also raised the following points on the proposed regulatory requirements -

- (a) the proposal to restrict "private kitchens" to three hours of operation daily was unreasonable as this would cause much inconvenience to the patrons;
- (b) the proposed seating capacity (12 - 18 persons at any one time) was too small;
- (c) the proposed fire safety requirements in paragraph 5(e) of the Administration's paper were too stringent and would incur substantial operational cost to "private kitchens", rendering them unable to continue their operation;
- (d) the reasons for the operator to obtain the approval of the Town Planning Board for change of use of the premises; and
- (e) the reasons for not allowing take-away business in private kitchens.

56. DD(EH) made the following responses :

- (a) The Administration had paid site visits to observe the operation of "kitchen kitchens" and considered that three hours of operation daily was appropriate, so that it would not cause too much nuisance to the neighbours of these premises. For premises which wanted long operating hours, they should apply for a proper restaurant licence.
- (b) The Administration was only proposing that the seating capacity of a "private kitchen" had to be limited, and this would depend on the size of the premises concerned, and other considerations such as floor loading capacity, fire safety requirements and the need to minimize nuisance to neighbours.

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- (c) The proposed fire safety requirements for "private kitchens" were not particularly stringent, as residential buildings in general should be able to meet these requirements, such as the provision of suitable and appropriate fire service installation and equipment (e.g. fire extinguishers). Moreover, sprinkler systems were not required for premises with a floor area of less than 230 m².
- (d) No take-away business was allowed for "private kitchens" in order to prevent operators from abusing the system by operating as food factories without the requisite licence.
- (e) For premises zoned as "Residential A", commercial activities were only allowed for the first 3 storeys on the ground level. In these cases, it would be necessary for the operators to obtain the approval of the Town Planning Board for the change of use of the premises. Where the land lease and the deed of mutual covenant of the building concerned did not allow the operation of "restaurants", it would also be necessary for the operator to apply for a No Objection Letter or Waiver from the Lands Department, and obtain the consent of the Owners' Incorporation (OI) or other co-owners (where there was no OI) of the building concerned.

57. Miss CHAN Yuen-han considered that it was often difficult to define what constituted "take-away" business, for example, a patron might wish to order an additional bowl of snake soup for take-away after dinner. She said that this would pose difficulty in enforcement. She also proposed that a "private kitchen" should be allowed to operate for five hours a day and to accommodate three large round tables at any one time. DD(EH) noted Miss CHAN's suggestions.

58. Mr Tommy CHEUNG expressed dissatisfaction that the Administration proposed to exempt "private kitchens" from the full licensing requirements for food businesses. He said that this was unfair to other food businesses, including those small restaurants with small seating capacity, which were currently required to apply for a licence to operate. He considered that the Administration should also protect the interests of existing licensees of food businesses. He criticised the Administration for adopting double standards on this matter.

59. Mr CHEUNG commented that the proposed regulatory framework for "private kitchens" was impractical and not well thought out. He also raised the following concerns in this regard -

- (a) The Administration's current proposal seemed to be contradictory to its another proposal that meat roasting food factories should not be allowed in the long term to operate in residential buildings, with a view to minimising nuisances caused to residents concerned.

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- (b) It was unclear whether "private kitchens" would be required to obtain liquor licences for selling liquor and whether these premises would be able to get a liquor licence under the current criteria.
- (c) It was absurd to allow the operation of "private kitchens" only in residential buildings but not in commercial premises. It was also unclear whether "private kitchens" would be subject to the new provisions under the Public Health and Municipal Services Ordinance (Cap.132) which provided for the issue of closure orders against unlicensed food premises and premises which posed an immediate health hazard.
- (d) It would be problematic if the approval or consent of the Town Planning Board and OIs was required for the proposed operation of private kitchens in residential buildings. It was also not clear whether a requisite percentage of votes of consent from the OIs concerned would be required for the proposed use of the premises as a "private kitchen"; and whether the consent would still be valid when the OI changed terms;
- (e) It would be difficult for "private kitchens" to meet the fire safety requirements, such as the installation of fire resisting doors and fire resisting walls, as such doors and walls in residential units could hardly meet the high standards as required for catering establishments.
- (f) It would be difficult for the Administration to enforce the requirements such as operating hours and the prohibition of take-away business.
- (g) It would be unfair if the operation of the proposed regulatory framework was to be cross-subsidised by the licensing fees collected from other food businesses.

60. Mr CHEUNG suggested that the Administration should hold discussions with representatives of the catering industry and other parties concerned to sort out the problems with the proposed regulatory framework.

61. DD(EH) made the following responses to Mr CHEUNG's comments -

- (a) The Administration proposed that, in the long term, meat roasting food factories should not be allowed to operate in residential buildings because according to the Town Planning Ordinance, roasting activities were a kind of industrial activity and should only be carried out in industrial premises.

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- (b) Small-scale food shops with limited seating capacity still had to obtain licences to operate because there was no restriction on their business hours. In other words, they could operate in a much larger scale than "private kitchens".
- (c) At present, some patrons of "private kitchens" brought along their own bottles of wine. In future, "private kitchens" would have to apply for liquor licences from the Liquor Licensing Board for the sale of liquor.
- (d) "Private kitchens" were also subject to the relevant provisions in Cap.132. For those which were applying for registration under the future regulatory framework, FEHD would conduct inspections on them and allow them a reasonable period of time to make improvements for meeting the required standards. However, enforcement actions would be taken against those "private kitchens" which did not apply for registration or which failed to comply with the regulatory requirements.
- (e) FEHD had discussed the requirement of fire resisting walls with the Fire Services Department. The requirement was actually not very stringent, and the fire resisting walls only needed to be of a certain thickness with fire resistant capacity up to a certain period.
- (f) A registration fee would be charged for "private kitchens". The Administration did not plan to cross-subsidise the future costs of inspections and registration of "private kitchens" from the licence fees of other food businesses.
- (g) The Administration would issue detailed guidelines to frontline staff in respect of the enforcement of "private kitchens". "Private kitchens" which did not operate take-away business as their main business would not be the targets of the enforcement.
- (h) The requisite percentage of votes of consent was stipulated in the deed of mutual covenant of the building concerned. When OIs changed terms, the consent of incoming members was required for the continued use of the premises as a "private kitchen".

62. DD(EH) said that the proposed requirements were not difficult to comply with. He further said that if operators of existing "private kitchens" considered that they would not be able to meet such requirements, they might move to elsewhere to operate. He reiterated that it was also necessary to safeguard the rights of the property owners of the buildings concerned and to respect the planning/land lease conditions of such premises. DD(EH) said that the proposed regulatory control aimed to ensure public health and safety.

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63. Mr Tommy CHEUNG said that it was unfair to other food establishments that "private kitchens" could be exempted from food business licensing because of the shorter business hours. He said that some small-scale food shop operators might also be willing to operate only for a few hours a day if they could be exempted from the normal licensing requirements for food establishments. He considered that for parity reasons, the exemption arrangements should apply to "private kitchens" operating in residential and commercial buildings.

64. The Chairman asked about the present legislation regulating the sale and consumption of wine in food premises. DD(EH) replied that it was required by law that food premises could not sell wine without a liquor licence. However, patrons could bring along their own bottles to the premises and consumed the wine there. He said that "private kitchens" would also have to apply for liquor licences from the Liquor Licensing Board for the sale of liquor.

65. DFEH clarified that under the Administration's current proposal, "private kitchens" operating in commercial buildings or in the commercial portion of composite buildings would still be required to apply for a restaurant licence, because these premises should be able to meet the relevant building and fire safety requirements. He said that "private kitchen" operators were also encouraged to move to these premises and operate with a restaurant licence.

66. DFEH pointed out that for those "private kitchens" operating in residential buildings, they would probably not be able to comply with the licensing requirements due to restrictions on tenancy and physical constraints of the buildings concerned. However, as there were public views in support of allowing existing "private kitchens" to continue with their businesses, the Administration had worked out a proposal to regularise the operation of "private kitchens". He pointed out that given the various constraints of residential buildings where "private kitchens" were located, some relaxation of the existing regulatory framework for food business had to be made to allow room for "private kitchens" to survive. Nevertheless, it was still necessary for the Administration to impose appropriate regulatory control on "private kitchens" in order to ensure public health and safety as well as to safeguard the interests of the property owners of the buildings concerned.

67. DFEH said that the Administration wished to seek members' views on the direction of the intended regulatory control for "private kitchens". He said that for details of the regulatory requirements, the Administration would discuss with the parties concerned and submit a further proposal to the Panel for members' comments.

68. Mr Tommy CHEUNG said that he totally disagreed to the direction of the regulatory framework for "private kitchens" proposed by the Administration and also objected to many of the detailed requirements in the paper.

69. Dr LO Wing-lok shared Mr Tommy CHEUNG's view that the proposed regulatory control was in the wrong direction. He said that the Administration had

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compromised too much but could please nobody in the end. He said that the crux of the problem was how to regulate these "private kitchens" which were actually "domestic restaurants" ("住家食肆") operating in residential buildings or in the domestic portion of a composite commercial/residential building. He said that as the Administration's proposal was unfair both to the catering industry and property owners of the buildings concerned, the Administration should withdraw the proposal and approach the issue in another way. He said that given the high vacancy rate of premises in commercial buildings and industrial areas, the Administration should explore the feasibility of requiring these "private kitchens" to move to commercial/industrial premises and to comply with the normal licensing requirement for food premises.

70. Dr LO commented that the Administration did not seem to know the extent of the problem as it could not tell how many "private kitchens" were in operation. He further said that he was dismayed that the proposed regulatory requirements did not include hygiene requirements, such as provision of toilets, wash basins, proper supply of mains water, etc.

71. DD(EH) explained that less stringent regulatory requirements were proposed for the "private kitchens" because it would not be possible for residential buildings to meet some of these requirements, such as the ratio between the area of kitchen and the total floor area. As regards the requirements for provision of toilets and wash basins, he said that these were all provided in residential premises and would not need to be mentioned in the Administration's paper.

72. Mr WONG Yung-kan said that it would be unfair to a licensed restaurant operating on the ground floor of a composite commercial/residential building, if "private kitchens" were allowed to operate on upper floors of that building. He suggested that "private kitchens" should not be allowed to operate in a building where a restaurant was already operating on the ground floor.

73. Mr WONG asked about the level of registration fee for "private kitchens" and whether the fee was based on cost-recovery principles. DD(EH) replied that the cost-recovery principle would apply in the calculation of the registration fee.

74. Mr WONG shared the concern of Mr Tommy CHEUNG that it would be problematic to require the operator of a "private kitchen" to seek the consent of the OI concerned, and it would pose uncertainty since there was no guarantee of such consent when the OI changed terms.

75. DFEH said that he had earlier pointed out that there were difficulties for "private kitchens" to operate in residential buildings, and the consent of OI was one of such difficulties. He invited members' views as to whether they supported, as a matter of principle, that "private kitchens" should be allowed to continue their operation in residential premises.

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76. Miss CHAN Yuen-han said that many people would like to patronise "private kitchens" because they served special cuisines or dishes, and that "private kitchens" were also common in other places such as Taiwan and Japan. She agreed that many technical problems would need to be resolved in regulating "private kitchens", and that the Administration would have to balance the interests of different parties including the catering industry. She considered that the Administration should further refine the detailed regulatory requirements for "private kitchens".

77. Miss CHAN Yuen-han and Mr WONG Yung-kan said that they supported that existing "private kitchens" should be allowed to continue subject to regulatory control. They considered that the Administration should refine its proposals and improve the proposed regulatory framework.

Way forward

78. Mr Michael MAK asked how the Administration would take forward the proposed regulatory control of "private kitchens", and whether a grace period would be allowed for the registration of existing "private kitchens". He also asked whether the Administration would take prosecution actions against the existing "private kitchens" before the proposed regulatory framework was put in place.

79. DD(EH) said that the Administration intended to allow existing "private kitchens" to continue their operation before the proposed regulatory framework was put in place. To ensure that the existing "private kitchens" met hygiene requirements in relation to food preparation and processing, FEHD would now start to conduct inspections on these premises. Prosecutions would be taken against those which did not meet such requirements.

80. In response to the Chairman, DD(EH) said that the Administration estimated that there were some 40-50 private kitchens currently in operation in Hong Kong.

81. At the Chairman's request, DD(EH) agreed to provide information to the Panel on the general conditions of the existing "private kitchens" in terms of their hygiene standards, means of escape, etc.

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82. In concluding the discussion, the Chairman said that members had divergent views on the proposed regulatory framework for "private kitchens". He further said that Mr Tommy CHEUNG and Dr LO Wing-lok were opposed to the Administration's proposal and they considered that prosecution actions should be taken against unlicensed food premises which were found in breach of the law. On the other hand, Miss CHAN Yuen-han and Mr WONG Yung-kan supported that existing "private kitchens" should be allowed to continue their operation subject to the regulatory control, and that the proposed requirements should be further refined.

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VII. Any other business

Re-scheduling of regular meetings from January to July 2003

83. The Chairman proposed and members agreed that starting from January 2003, the regular meetings of the Panel would be re-scheduled to the fourth Tuesday of each month at 10:45 am to avoid clashing with the regular meetings of The Legislative Council Commission. The Clerk would issue the revised meeting schedule to members.

(Post-meeting note : The revised schedule of regular meetings for 2002-03 session was issued to members vide LC Paper No. CB(2) 439/02-03 dated 21 November 2002.)

84. There being no other business, the meeting ended at 10:50 am.

Council Business Division 2
Legislative Council Secretariat
30 December 2002