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the Administration)

Panel on Food Safety and Environmental Hygiene
Subcommittee to Study the Streamlining of Food Business Licensing

Minutes of meeting
held on Tuesday, 17 May 2005 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon Tommy CHEUNG Yu-yan, JP (Chairman)
Hon Andrew CHENG Kar-foo
Hon Vincent FANG Kang, JP

Member attending : Hon Emily LAU Wai-hing, JP

Members absent : Hon WONG Yung-kan, JP
Hon WONG Kwok-hing, MH

Public officers attending : Mr Vincent LIU
Principal Assistant Secretary (Food & Environmental Hygiene) 2
Health, Welfare and Food Bureau

Ms Annette LEE
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Mr LO Fu-wai
Assistant Director (Operations)1
Food and Environmental Hygiene Department

Mrs YUEN KWONG Wai-king
Chief Executive Officer (Boards & Committees)
Food and Environmental Hygiene Department

Ms Angela CHIU
Superintendent of Police (Licensing)
Hong Kong Police Force

Mr WONG Chak-kong, John
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Betty MA
Senior Council Secretary (2)1

Staff in attendance : Miss Lolita SHEK
Senior Council Secretary (2)7

Ms Anna CHEUNG
Legislative Assistant (2)5

Action

I Confirmation of minutes of meeting

[LC Paper Nos. CB(2) 1397/04-05(01), CB(2) 1523/04-05(01) and CB(2) 1525/04-05(01)]

The minutes of the meetings on 2 and 5 March 2005 and 4 April 2005 were confirmed.

II Date of next meeting and items for discussion

[LC Paper Nos. CB(2) 1342/04-05(01) and CB(2) 1546/04-05(01)]

2. The Chairman informed members that the Economic and Employment Council (EEC) would discuss the proposed recommendations on streamlining of food business licensing to be made to the Government in June 2005. The EEC would be able to provide a paper on its recommendations for discussion by the Subcommittee in the end of June 2005. He proposed that the next meeting of the Subcommittee be held on Tuesday, 28 June 2005 at 2:30 pm to discuss the following items –

- (a) EEC's recommendations on streamlining of food business licensing; and
- (b) the Administration's response to suggestions to improve the food business licensing regime, in particular the establishment of a unified licensing authority and adoption of third party certification of compliance of licensing requirements.

Action

The Chairman further proposed that representatives of operators of supermarkets and convenience stores should be invited to give their views on item (a) above, as the review conducted by EEC mainly covered retail shops and supermarkets/chain food stores. Members agreed.

III Liquor licensing

[LC Paper Nos. CB(2) 1155/04-05(10) to (12), CB(2)1526/04-05(01) to (03) and CB(2) 1546/04-05(02)]

3. At the invitation of the Chairman, Principal Assistant Secretary (Food & Environmental Hygiene)² of the Health, Welfare and Food Bureau (PAS/HWF) highlighted the salient points in the Administration's paper on liquor licensing procedures [LC Paper No. CB(2) 1155/04-05(10)].

Transparency of liquor licensing procedures

4. The Chairman said that members of the Panel on Food Safety and Environmental Hygiene and several District Councils (DCs), when meeting with Legislative Council Members, had expressed various concerns about the liquor licensing procedures. Some DCs criticised the Liquor Licensing Board (LLB) for lacking transparency in processing licence applications as some applications were heard in closed door meetings. Some other DCs were concerned that liquor licences were granted in some cases despite objection from the local communities and the DCs concerned for causing nuisances.

5. Chief Executive Officer (Boards & Committees) of the Food and Environmental Hygiene Department (CEO(B&C)), who was Secretary to LLB, referred members to the letter dated 12 March 2005 from the Chairman of LLB [LC Paper No. CB(2) 1155/04-05(11)]. The Chairman of the Board had explained that as the Board was set up to process applications for liquor licence independently under the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) (the Regulations), and its nature and operation were similar to that of the Judiciary Administration, it would not be appropriate for the Board to discuss liquor licensing with the Subcommittee. As a result, no representative from the Board would attend the meetings of the Subcommittee.

6. As regards the concern of the Panel on Food Safety and Environmental Hygiene and DCs about the transparency of liquor licensing procedures, CEO(B&C) explained that the criteria for considering applications as outlined in paragraph 6 of the Administration's paper were specified clearly in Regulation 17 of the Regulations as well as on the Board's website. While non-contested cases would be approved by the Secretary to LLB under delegated authority, open hearings would be held for contested cases where objection was received from local residents, the Police or other government departments. Contentious applications with adverse comments from the

Action

public or government departments but with no objections, or applications with irregularities found on the subject premises, would be considered by the Board in closed door meetings. The Secretary to LLB would then provide the Board's decisions on the applications, together with reasons, to the applicants and other interested parties in writing in 10 working days. Applicants who were not satisfied with the Board's decisions could appeal to the Municipal Services Appeals Board (MSAB), within 28 days after the date of formal notification of the Board's decisions.

7. On the concern about contentious applications being considered in closed door meetings, CEO(B&C) explained that it would not be appropriate to arrange for these cases to be considered in open meetings, because personal data (such as criminal records) of the applicants and commercial information on the subject premises would be considered and discussed at the meetings.

8. CEO(B&C) added that LLB would take into consideration the specific circumstances of the case, the views and information presented by all the parties concerned, as well as the provisions in the relevant legislation, in making a decision on a liquor licence application. As the reasons for the Board's decisions were different in each case, it was difficult to categorise the cases and compile statistics for disclosure to the public. It was also not appropriate to disclose the reasons for the decisions as personal data of the applicants and commercial information on the subject premises were involved. Nevertheless, if written enquiries about the reasons for the decisions of the Board were received, the Board would respond in writing.

9. Mr Andrew CHENG said that local communities had reservation about the existing arrangement under which contentious cases were handled in closed door meetings. He informed members that Tai Po DC had once expressed reservation on some liquor licence applications. However, LLB had not taken the DC's views into account and granted liquor licence to the applicants concerned. He urged the Board to consider the views of the local communities and conduct open hearings for contentious cases.

10. The Chairman declared that he was a member of LLB. He explained that closed door meetings were held to consider whether it was necessary to hold open hearings in respect of contentious applications. During these closed door meetings, the Board would decide whether liquor licence should be granted or open hearings should be conducted. The Chairman further explained that while open hearings were normally held for contested cases, some of these cases would also be considered in closed door meetings because the objectors were not willing to attend open hearings, and it would not be fair to the applicants to conduct open hearings under such circumstances.

11. The Chairman added that for cases where open hearings were held, closed door meetings would still be conducted after the hearings to decide whether the applications should be approved or rejected; and if the applications were approved, whether additional conditions should be imposed on the licences. However, the

Action

Board's decisions would be promulgated in writing at the meeting venue not later than 4 pm on the same day.

12. CEO(B&C) supplemented that in some cases, the past record of the subject premises might cast doubt on the premises' suitability for selling or supplying liquor, for example, if there were records of complaints against the premises. The Secretary to LLB would refer these cases to the Board for consideration in closed door meetings whether licence covering a shorter duration, or licence with additional conditions imposed, should be granted.

13. The Chairman asked whether the transparency of the licensing procedures could be enhanced under existing legislation, such as disclosing the outcome of the vote taken on a liquor licence application.

14. Senior Government Counsel (SGC) explained that the operation of LLB was governed by the Regulations. While LLB was required to give notice in writing of its decisions, together with reasons, to the applicants and other interested parties, it was not required by the law to disclose the outcome of the votes on the applications. SGC further explained that under Regulation 14A of the Regulations, LLB could determine the procedure for meetings of and applications to the Board, including the manner of making, hearing and determining applications. It was therefore up to the Board to decide whether to enhance the transparency of the licensing procedures by, say, disclosing the outcome of the votes on the applications to the public.

Time taken to process liquor licence applications

15. Referring to the flow chart showing the liquor licensing procedures in the Annex to the Administration's paper, Mr Andrew CHENG enquired about the time taken to process a liquor licence application, and the average time for processing these applications in 2004. He expressed concern whether a long time was taken to process contentious applications, as open hearings might subsequently be held for these cases.

16. CEO(B&C) explained that a large number of non-contested cases (nearly 5,000 applications) were received in 2004. The LLB Secretariat had not compiled statistics on the average processing time of these cases. Her impression was that for non-contested cases which were approved by the Secretary to LLB under delegated authority, the processing time ranged from five weeks to eight weeks in 2004. For contentious and contested cases, the average processing time was 10 weeks and 12 weeks respectively in 2004.

17. Mr Andrew CHENG said that he had not received many complaints against the time taken to process liquor licence applications. He considered the processing time acceptable.

Action

18. In response to Ms Emily LAU's enquiry, the Chairman explained that the food business trade had expressed concern about the long time taken to process liquor licence applications, the long consultation process involved in the licensing procedures, as well as the requirement for an application to be made by an individual and not a company.

19. Ms Emily LAU asked why the Administration had not responded to these concerns in its paper provided for the meeting. Principal Assistant Secretary (Food & Environmental Hygiene)² of the Health, Welfare and Food Bureau (PAS/HWF) explained that the Administration would provide in June 2005 a written response to the views expressed by the deputations and the Subcommittee.

Procedures for processing liquor licence applications

20. At the invitation of the Chairman, Assistant Director (Operations)¹ of the Food and Environmental Hygiene Department (AD/FEHD) took members through the procedures for processing liquor licence applications before the applications were referred to LLB by FEHD's licensing staff, as outlined in the Annex to the Administration's paper.

21. In response to an enquiry from Ms Emily LAU, AD/FEHD clarified that for contested cases, five more working days were required for FEHD district staff to compile a detailed report about the subject premises, before FEHD licensing staff prepared papers and report to the Secretary to LLB.

22. CEO(B&C) briefed members on the procedures for processing liquor licence applications by the LLB Secretariat upon receipt of papers and reports from FEHD licensing staff. She explained that the processing of contested and contentious cases had to tie in with the meeting schedule of LLB which was fixed at the beginning of each year. For contested cases, the LLB Secretariat would arrange an open hearing, and would issue notices 14 days prior to the hearings to invite the applicants and the objectors to present their views at the hearings. In order to comply with the notice requirement, the three FEHD licensing offices would have to refer such applications to LLB Secretariat 18 days before the hearings took place. For contentious cases, FEHD was required to refer applications to the Secretary to LLB 10 days prior to a LLB meeting. The Secretary to LLB would arrange to forward papers on the cases to Board members about five days before the meetings.

23. CEO(B&C) further explained that in the event that many contested applications were received from FEHD, the Secretary to LLB would space out the open hearings, and some of the applications would have to be heard at a later meeting. Normally, the outstanding applications could be processed within one to three meetings. However, there was an occasion in 2004 on which some applications were heard four weeks from the date of receipt.

Action

24. CEO(B&C) added that upon receipt of contentious cases from FEHD, the Secretary to LLB would arrange to include them in the agenda for the upcoming closed door meeting. If the Board decided that open hearing should be conducted for a contentious case, the Secretary to LLB would arrange for the hearing. If the Board decided to approve the application without an open hearing, it would also decide on the duration of the licence, and whether additional conditions should be imposed. FEHD would arrange to issue liquor licence within five working days upon production of a valid restaurant licence/certificate of compliance by the applicant. At the same time, the Secretary to LLB would inform within 10 working days the applicants and other interested parties in writing the Board's decisions, together with reasons, as well as their right of appeal to MSAB.

25. CEO(B&C) said that open hearings were conducted for cases where objection was received, or according to LLB's decisions in closed door meetings. The Secretary to LLB would issue a notice 14 days prior to the hearing to invite the applicant and the objector(s) to attend the hearing so that the applicant could provide representations to the Board, and choose to arrange for his legal representative to give evidence in the hearing. The Board would take a decision on the application after the hearing in a closed door meeting. The decision in writing would be promulgated at the meeting venue not later than 4 pm on the same day. The Secretary to LLB would, within 10 working days, inform the applicant and other interested parties the Board's decision in writing together with reasons, and their right of appeal to MSAB.

26. CEO(B&C) further said that if MSAB received an appeal, it would arrange for a hearing and issue a notice to invite LLB to send its representatives to the hearing. LLB would follow up MSAB's decision on the appeal.

27. In response to an enquiry from the Chairman, CEO(B&C) clarified that once the Secretary to LLB had approved a non-contested application, FEHD would arrange to issue the liquor licence within five working days, upon production of a valid restaurant licence/certificate of compliance by the applicant.

28. Referring to the occasion in 2004 mentioned by CEO(B&C) that open hearings for some contested applications had to be deferred for four weeks, the Chairman expressed concern that these cases had been delayed. He considered that open hearings should be conducted for all cases as soon as possible.

29. CEO(B&C) explained that in spite of the backlog, there had not been discontinuation of licences due to delay in the processing of licence applications in 2004. On average, her impression was that the processing of a contested liquor licence application could be completed in 12 weeks.

30. The Chairman asked whether any contentious cases had ever been deferred for several weeks before they were considered at the closed door meetings of LLB in 2004. CEO(B&C) replied that on one occasion in 2004 when 44 cases were received from FEHD, these cases had to be dealt with in two meetings.

Action

Admin 31. At the request of Mr Vincent FANG, the Administration undertook to provide information on the time taken for each step in processing liquor licence applications as indicated in the flow chart in the Annex to the Administration's paper.

(Post-meeting note : The information on the processing time for liquor licences provided by the Administration was issued to members vide LC Paper No. CB(2)2045/04-05 on 22 June 2005.)

32. In response to Mr Vincent FANG's enquiry, CEO(B&C) informed members that in 2004, LLB processed 4 969 non-contested applications out of a total of 6 036 applications. Ten appeals had been lodged with MSAB in 2004, and three of which were allowed. LLB also processed 1 067 contested and contentious cases in the same year, 248 of which were heard in open hearings.

33. The Chairman added that appeals could be lodged not only by the applicants but also by other interested parties.

Criteria for considering liquor licence applications

34. Mr Vincent FANG enquired about the criteria adopted for considering liquor licence applications. He considered that the transparency of these criteria should be enhanced, so that applicants could assess the chance of being granted the licence.

35. SGC advised that Regulation 17(2) of the Regulations stipulated that LLB should not grant a liquor licence unless it was satisfied that –

- (a) the applicant was a fit and proper person to hold the licence;
- (b) the subject premises were suitable for selling or supplying intoxicating liquor, having regard to the location and structure of the premises, and the fire safety and hygienic conditions in the premises; and
- (c) the grant of the licence was not contrary to the public interest.

36. Mr Vincent FANG commented that the criteria were rather abstract. He requested for more elaboration on the criteria, in particular the "fit and proper person" test.

37. The Chairman remarked that the "fit and proper person" test for licensees was adopted in various ordinances. He considered that its meaning was subject to interpretation under different ordinances.

38. SGC explained that in determining whether the applicant was "a fit and proper person", LLB would take into consideration comments from the Hong Kong Police Force, Environmental Protection Department and the local communities, other information available on the application, as well as the public interest.

Action

39. Superintendent of Police (Licensing) of the Hong Kong Police Force (SP(L)) explained that upon receipt of a liquor licence application, the Licensing Office of the Police would refer it to the Police station in the district concerned. For straightforward cases with all the information required of the applicant, the Police could provide a reply to FEHD within two weeks. In other more complicated cases, it would take about four weeks for the Police to reply.

40. SP(L) further explained that in examining the applications, the Police would consider, from a law and order perspective, whether the grant of the licence was contrary to the public interest, and whether the applicant was “a fit and proper person” for holding the licence. Regarding the consideration of public interest, SP(L) said that the Police would have regard to the following irregularities which were commonly found on premises selling intoxicating liquor –

- (a) nuisances;
- (b) breaches of law and order such as violence, dangerous drugs problems, triad activities, number of persons on the premises exceeding that permitted in the licence, non-compliance with fire safety requirements, employment of persons under the age of 18 years, and selling liquor to persons under the age of 18 years; and
- (c) non-compliance with conditions of the licence such as licensee’s failure in supervising the premises personally or discharging his obligations as a licensee.

41. Regarding the “fit and proper person” requirement, SP(L) explained that the Police considered that as the mode of operation and management of premises selling liquor were different from that of a restaurant, the requirements of a liquor licensee as “a fit and proper person” were also different from those required of a restaurant licensee. As a liquor licensee would be charged with greater responsibilities which included supervising the premises personally, and ensuring that no disorder such as games of chance, violence and other immoral or illegal activities be permitted on the premises, the integrity and credibility of the licensee to ensure that he was capable of managing the premises properly were important in determining an application. As required by law, in assessing whether a person was fit and proper, the Police would take into account his background such as criminal records, qualifications and experience in managing similar premises, and health conditions.

42. In response to Mr Vincent FANG’s further enquiry whether different criteria would be adopted for considering new licence applications, SP(L) informed members that the Police would also consider the suitability of the subject premises for selling or supplying liquor in these cases. Under Regulation 19 of the Regulations, where a liquor licence was revoked under Regulation 23(1), LLB should refuse to consider any further or other application for a liquor licence in respect of the premises concerned,

Action

within a period of 12 months after the date of revocation by the former applicant or licensee, or by any other persons, unless such person satisfied LLB that he was not acting on behalf of the former applicant or licensee. In formulating its comments on the applications to LLB, the Police would take into account whether there were any relationships between the new and the former applicants, and whether there were records of complaints against the premises.

43. Ms Emily LAU expressed concern that additional time was taken to process liquor licence applications because applicants were not clear about the licensing criteria. She considered that the processing of applications would be expedited if the criteria were explained to applicants clearly.

44. SP(L) informed members that the Police and the LLB Secretariat had been organising briefings for potential liquor licence applicants on a monthly basis. The LLB Secretariat had also produced a brochure on the application procedure. Sufficient information had therefore been provided to applicants.

45. The Chairman remarked that the applicants normally knew about the requirements of the Police and LLB. In his view, integrity was considered a more important criterion in determining whether a person was “a fit and proper person” to hold a liquor licence. Nevertheless, LLB had much room to exercise its discretion in determining whether the applicant met the licensing criteria.

Streamlining of liquor licensing procedures

46. Noting that the Police and the Home Affairs Department (HAD) were required to forward their comments on liquor licence applications to FEHD within one month, the Chairman asked whether the two departments could shorten the processing time and provide their comments to FEHD earlier so as to expedite the licensing process.

47. SP(L) replied that the Police handled more than 3 400 applications each year. Upon receipt of the applications from FEHD, the Licensing Office of the Police would refer them to the relevant Police districts for conducting checks on the applicants and the subject premises. Under normal circumstances, the Police would be able to reply to FEHD within two weeks.

48. PAS/HWF informed members that the Health, Welfare and Food Bureau and FEHD had consulted the Police and HAD on whether they could shorten the time taken for processing liquor licence applications. The two departments had advised that they could shorten the processing time to three weeks. PAS/HWF explained that HAD had to consult the local communities such as District Councils, Area Committees and owners' corporations (OCs) on the applications. If an OC meeting was to be convened to consult the owners concerned, two weeks' notice had to be given as required by law. Therefore, the processing time could only be shortened to three weeks for straightforward cases. A longer processing time would be required if opinions on the applications were divided.

Action

49. PAS/HWF added that the time taken to process liquor licences was not very long under the existing licensing procedures. According to CEO(B&C), liquor licences could be issued to applicants within eight weeks in 80% of the cases. The deputations who attended the Subcommittee meeting on 5 March 2005 did not have strong views about the processing time of liquor licence applications.

50. Ms Emily LAU said that the Administration should advise the Subcommittee how the procedures could be streamlined so as to expedite the issue of liquor licences. Ms LAU asked whether the cost for processing licence applications could be recovered from the licence fees, and whether the issue of licences could be expedited with input of additional resources following an increase in licence fees.

51. The Chairman considered that the issue of licence could be expedited if more staff was deployed to process licence applications. He suggested that a fast track process could be offered to applicants so that the processing of applications could be expedited with extra charges. However, the Chairman pointed out that departments, such as the Police, which assisted in processing licence applications, were not reimbursed the costs incurred. Noting that a staffing review had been conducted for the LLB Secretariat, he urged the Administration to review also the staffing requirements for processing liquor licence applications in the relevant departments.

52. PAS/HWF responded that similar to the fees for food business licences, liquor licence fees had been frozen for a considerable period of time. The Administration was embarking on a review on fees and charges for food business licences including liquor licences. In line with Government's full-cost recovery principle, the Administration would include the costs of all government departments in the calculation of the fees in relation to food business licensing. However, as the licence fees collected by FEHD were credited to Government's General Revenue Account instead of FEHD's account, increase in licence fees would not necessarily result in allocation of additional resources and staff for processing licence applications. At the request of the Chairman, AD/FEHD undertook to provide information on the fees for different types of liquor licences after the meeting.

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(Post-meeting note : The information on the fees for different types of liquor licences provided by the Administration was issued to members vide LC Paper No. CB(2)2045/04-05 on 22 June 2005.)

53. The Chairman said that owing to time constraints, the discussion on agenda items IV and V, i.e. "Proposed measures to improve the food business licensing regime" and "Withdrawn/Abandoned cases of food business licence applications" would be deferred to a future meeting. Members agreed.

Action

IV Any other business

54. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 2
Legislative Council Secretariat
2 September 2005