

## **Information Note**

### **LegCo Panel on Food Safety and Environmental Hygiene**

#### **Control of Unauthorised Extension of Food Business**

At the meeting of the LegCo Panel on Food Safety and Environmental Hygiene held on 13 June 2006, the Administration was asked to provide information about the reasons for not being able to take enforcement actions against some complaints of unauthorised extension of food business received in 2005, and the number of repeated offenders for breaching section 34C of the Food Business Regulation (Cap. 132X) (FBR) and section 4A of the Summary Offences Ordinance (Cap. 228) (SOO) (the relevant sections are at the Annex).

2. Prior to 2006, the Food and Environmental Hygiene Department (FEHD) considered that it had difficulties in taking action under section 34C of the FBR if FEHD could not locate the licensee at the time when enforcement action was taken. To the understanding of FEHD at that time, section 34C of the FBR only allowed enforcement action to be taken against the licensee. Also, FEHD considered that the mere existence of dining tables and chairs etc., outside the licensed area did not constitute an offence. FEHD at that time considered that in order to invoke section 34C of the FBR, it is necessary for the authority to prove that a licensee's food business was being carried on at a place outside the licensed area. In the absence of such evidence, FEHD would rely

on section 4A of the SOO to take enforcement action against street obstruction caused by tables, chairs etc.

3. In 2006, FEHD sought legal advice on its enforcement powers under section 34C of the FBR. Legal advice was that FEHD could give prior warning to licensees that it would enforce section 34C of the FBR. FEHD would only have to prove either the licensee did conduct illegal extension of business at the scene, or if the licensee was not at the scene, he had given instructions or implied permission to his employees to conduct business outside the licensed area. With the benefit of the legal advice, FEHD has adopted a new enforcement strategy and has enhanced intelligence gathering since March 2006. The difficulties in taking enforcement action have been significantly reduced and enforcement under section 34C of the FBR has become more fruitful. The number of prosecutions under section 34C of the FBR from 2006 to September 2010 is as follows:

<b>Year</b>	<b>Number of prosecutions</b>
2006	395
2007	614
2008	642
2009	795
2010 (Up to September)	595

4. From 2009 to September 2010, there are 196 repeated offenders convicted of section 34C of the FBR and 875 repeated offenders of section 4A of the SOO. FEHD will closely monitor the situation and adjust the enforcement strategy so as to enhance the effect of enforcement action.

**Food and Health Bureau  
Food and Environmental Hygiene Department  
December 2010**

**Annex**

<b>Chapter:</b> 132X	<b>Title:</b>	<b>FOOD BUSINESS REGULATION</b>	<b>Gazette Number:</b>	<b>L.N. 320 of 1999</b>
<b>Section:</b> 34C	<b>Heading:</b>	<b>Food business otherwise than at the place delineated in the plan</b>	<b>Version Date:</b>	<b>01/01/2000</b>

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No licensee shall, save with the permission in writing of the Director, carry on or cause, permit or suffer to be carried on a food business at or from any place beyond the confines of the food premises as delineated on the plan approved under section 32 in respect of his licence.

(L.N. 561 of 1996; 78 of 1999 s. 7)

<b>Chapter:</b> 228	<b>Title:</b>	<b>SUMMARY OFFENCES ORDINANCE</b>	<b>Gazette Number:</b>	
<b>Section:</b> 4A	<b>Heading:</b>	<b>Obstruction of public places</b>	<b>Version Date:</b>	<b>30/06/1997</b>

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Any person who without lawful authority or excuse sets out or leaves, or causes to be set out or left, any matter or thing which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, any person or vehicle in a public place shall be liable to a fine of \$5000 or to imprisonment for 3 months.

(Replaced 54 of 1972 s. 18)