

**Extract from minutes of meeting of
Panel on Food Safety and Environmental Hygiene held on 13 June 2006**

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V Changes to the food business licensing procedures

[LC Paper No. CB(2) 2305/05-06(04)]

[LC Paper No. CB(2) 2076/05-06(01)]

25. The Chairman said that the item was proposed by Mr Tommy CHEUNG and two submissions had been received from Hong Kong Catering Industry Association [LC Paper No. CB(2)2369/05-06(01)] and a member of the public [LC Paper No. CB(2)2347/05-06(01)].

26. PS(FEH)(Ag) said that FEHD had since mid-April 2006 implemented new licensing procedures to ensure that licensed food premises were free of unauthorised building works (UBWs) and in compliance with Government lease conditions and statutory plan restrictions. The new procedures applied to applications for new licence or transfer of licence only, and did not affect existing licences and renewal of licence.

27. Mr Tommy CHEUNG said that since 18 April 2006, FEHD had introduced a set of new licensing procedures for new food business licence and transfer of licence relating to the existence of UBWs at the premises and compliance with Government lease conditions. Regarding the compliance with Government land lease, Mr CHEUNG said that prior to 18 April 2006, if the proposed food business was not in compliance with the designated trade under the Government land lease, the applicants for food business licences could apply for a waiver. The applicants would be allowed to operate food business at the premises concerned after paying an administrative fee. However, after 18 April 2006, instead of applying for a waiver and paying the administrative fee, the applicants were required to pay a land premium for the variation in land use, which would also increase the valuation of the premises concerned. He added that many Government lease conditions were laid down decades ago, and many premises were in breach of such conditions if strict compliance was to be imposed. These problematic premises mainly existed on the Hong Kong Island as many premises there were subject to the old land lease conditions.

28. As regards UBWs, Mr CHEUNG pointed out that many applicants for new food business licences did not know whether all the structures attached to or extending from the premises were authorised or unauthorised. In many cases, the applicants could do nothing with regard to the UBWs attached to the premises, such as the water tank, which was a communal facility located outside the premises. Mr CHEUNG said that the new procedure significantly affected the operators of food business. He questioned the rationale for introducing such changes to the licensing procedures.

29. PS(FEH)(Ag) explained that Team Clean had made recommendations in its report to tackle the problem of UBWs in buildings. It was proposed in 2003 that FEHD should refuse to issue a food business licence if it came to FEHD's knowledge that there were UBWs attached to or extending from the premises under application. Moreover, in an investigation report of The Ombudsman in 2002 in relation to a complaint concerning a restaurant licence application, it was recommended that FEHD should advise and require food business licence applicants to check whether their proposed food business would contravene any Government lease conditions or outline zoning plan restrictions on the premises concerned. The Ombudsman also recommended FEHD to require applicants to declare that they had conducted such checks and indicate the results clearly. PS(FEH)(Ag) said that in the light of the recommendations of Team Clean and The Ombudsman, FEHD had consulted the food business trade and implemented the new licensing procedures in April 2006.

30. DD(EH)/FEHD supplemented that the Administration had consulted the Panel on the proposal to tackle the problem of UBWs in 2003 in the context of Team Clean's Report. Since then, FEHD had worked closely with the departments concerned and involved the relevant professional bodies in formulating the guidelines and the procedures. The trade had also been consulted and their concerns, such as extra cost to the trade, complication of the licensing process and risk to the transferee, had been taken into account. DD(EH)/FEHD said that to minimise the impact on the trade, the new procedures only applied to new licence and transfer of licence only, and did not affect some 20 000 existing licences and their renewal. There were less than 2 000 applications for transfer of licence in 2005.

31. DD(EH)/FEHD said that the requirement to comply with Government lease conditions and statutory plan restrictions was not new. Since 2002, the application form for new licences had clearly stated that it was the applicant's responsibility to ensure that the premises concerned were in compliance with the relevant food business legislation and other relevant statutory requirements, including the conditions in the Government lease and the statutory plan. The applicant was required to sign against the statements in the application form to indicate his understanding and acceptance of such terms. To streamline the licensing procedures, FEHD had since mid-April 2006 introduced a self-declaration form for the applicant to confirm compliance with Government lease conditions.

32. Mr Tommy CHEUNG said that the land lease conditions were very complicated and difficult to understand. Mr CHEUNG commented that the Administration had consulted the professional bodies, but not the food business trades, on the new licensing procedures. The impact on the trade was far greater than that pointed out by the Administration because existing licensees would need to apply for transfer of licences for moving to another premises to continue business or when there was a change in partners. Mr CHEUNG requested the Administration to provide a flowchart showing the new licensing procedures for issuance of a food business licence, and the number of working days required for each step.

33. Assistant Director/Buildings Department (AD/BD) responded that FEHD and BD had issued guidelines on food business licence application. Applicants were also reminded that they should choose premises which were suitable for operating food business premises, e.g. free of UBWs. AD/BD added that the food business trades and professionals could seek advice from BD on the new licensing procedures if necessary. Referring to Mr Tommy CHEUNG's concern about UBWs at communal areas, AD/BD said that under the new licensing procedures, the licensees were only responsible for removing UBWs attached to or extended from the premises concerned, and BD had issued guidelines on this.

34. DD(EH)/FEHD supplemented that a licence would be issued if an applicant could obtain certification from a recognized professional that the premises under application were free from UBWs. BD would not conduct special inspection to food premises to verify the professional certification prior to issue of a licence by FEHD, and any UBWs found during regular inspection by FEHD would be referred to BD for follow-up. Therefore, the new licensing procedures had not delayed the processing of application for food business licences.

35. DD(EH)/FEHD added that the workflow of FEHD and concerned departments and the performance pledges for processing new licence application remained unchanged. The acceptance of professional certification that the premises were free from UBWs was to meet the trade's request in order to streamline the licensing process. DD(EH)/FEHD reiterated that the food business trade and professional bodies were consulted over a long period on the new licensing procedures.

36. Mr Tommy CHEUNG said that the food business trade held strong views on the changes to the food business licensing procedures. He suggested that deputations should be invited to give views to the Panel on the new licensing procedures.

37. Mr WONG Yung-kan said that while he had no objection to Mr Tommy CHEUNG's proposal, he recalled that the Panel was consulted on Team Clean's recommendations and members expressed general support for the proposal. The Chairman advised that the Panel was consulted on the proposal to tackle the problem of UBWs, but not The Ombudsman's recommendations relating to Government lease conditions and statutory plan restrictions. Members raised no objection to holding a special meeting to meet with deputations and further discuss with the Administration the changes to food business licensing procedures.

(Post-meeting note : A special meeting has been scheduled for 7 July 2006 at 10:45 am to meet with deputations and the Administration.)

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