

**立法會**  
**Legislative Council**

Ref : CB2/PL/FE

LC Paper No. CB(2)1468/09-10  
(These minutes have been seen  
by the Administration)

**Panel on Food Safety and Environmental Hygiene**

**Minutes of meeting**  
**held on Tuesday, 13 April 2010, at 2:30 pm**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, SBS, JP (Chairman)  
Hon Andrew CHENG Kar-foo  
Hon TAM Yiu-chung, GBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon WONG Kwok-hing, MH  
Dr Hon Joseph LEE Kok-long, SBS, JP  
Hon KAM Nai-wai, MH  
Dr Hon LEUNG Ka-lau
- Members attending** : Hon LEUNG Yiu-chung  
Hon WONG Sing-chi
- Member absent** : Hon WONG Yung-kan, SBS, JP (Deputy Chairman)
- Public Officers attending** : Items IV and V  
Prof Gabriel M LEUNG, JP  
Under Secretary for Food and Health
- Item IV only
- Mr Francis HO  
Principal Assistant Secretary for Food and Health (Food) 2
- Mr CHEUK Wing-hing, JP  
Director of Food and Environmental Hygiene

Ms Rhonda LO Yuet-yee, JP  
Assistant Director (Operations) 2  
Food and Environmental Hygiene Department

Item V only

Mrs Angelina CHEUNG FUNG Wing-ping  
Principal Assistant Secretary for Food and Health (Food) 1

Dr Constance CHAN Hon-yea, JP  
Controller, Centre for Food Safety  
Food and Environmental Hygiene Department

Dr Philip HO Yuk-yin  
Consultant (Community Medicine) (Risk Assessment and  
Communication)  
Food and Environmental Hygiene Department

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (2)5

**Staff in attendance** : Miss Josephine SO  
Senior Council Secretary (2)1

Ms Maisie LAM  
Senior Council Secretary (2)6

Ms Sandy HAU  
Legislative Assistant (2)5

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**I. Confirmation of minutes**  
(LC Paper No. CB(2)1184/09-10)

The minutes of the meeting held on 9 March 2010 were confirmed.

**II. Information paper(s) issued since the last meeting**  
(LC Paper No. CB(2)1089/09-10(01))

2. Members did not raise any queries on the Administration's paper on fixed penalty system for public cleanliness offences issued on 12 March 2010.

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**III. Items for discussion at the next meeting**

(LC Paper Nos. CB(2)1230/09-10(01) and (02))

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 11 May 2010 at 2:30 pm -

- (a) Report of the Committee on Sustainable Fisheries; and
- (b) Total diet study.

4. The Chairman asked when the Administration would be in a position to report to members progress in the development of columbarium facilities in Hong Kong and of the poultry slaughtering and processing plant. Under Secretary for Food and Health ("USFH") replied that the Administration planned to do so in June/July 2010.

**IV. Alignment of Public Market Tenancy Agreements and One-off Tenancy Transfer Scheme for Operators**

(LC Paper Nos. CB(2)1230/09-10(03) and (04))

5. USFH briefed members on the alignment of public market tenancy agreements by the Food and Environmental Hygiene Department ("FEHD") and its introduction of the one-off tenancy transfer scheme, details of which were set out in the Administration's paper (LC Paper No. CB(2) 1230/09-10(03)). USFH also informed members of the Administration's decision to further extend the rental freeze of public market stalls for another year until 30 June 2011.

6. Members noted the submissions from the Federation of Hong Kong Kowloon New Territories Hawker Associations ("HKFHA") and 全港公共街市販商大聯盟 (LC Paper Nos. CB(2)1308/09-10(01) and (02)) tabled at the meeting.

Discussion

7. Mr TAM Yiu-chung sought the Administration's responses on the criticism made by HKFHA that FEHD failed to listen to the views of market tenants during the consultation on the alignment of public market tenancy agreements and related matters. Mr TAM further asked the Administration whether consideration could be given to HKFHA's requests, notably, the current practice of FEHD paying rates on behalf of the tenants, which had been adopted for years, should continue, and that the air-conditioning charges attributable to public areas of markets such as passages and lobbies should be borne by the Government, while tenants should only pay charges pro rata to their stall areas.

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8. USFH and Director of Food and Environmental Hygiene ("DFEH") responded as follows -

- (a) subsequent to the Panel meeting on 8 December 2009, FEHD organised 49 consultation meetings and consulted 77 Market Management Consultative Committees and 44 trader associations on the revised tenancy agreement template and related matters. FEHD had carefully considered the views expressed by consultees. For instance, noting that some tenants needed more time for consideration, tenants whose tenancies were due to expire on 30 June 2010 would be allowed to choose either the new tenancy agreement template or the original tenancy agreement (including the additional clauses and conditions previously conveyed to tenants through letters by FEHD). However, regardless of the version chosen, tenants were required to appear in person to sign the tenancy agreements at designated district offices of FEHD. The reason why FEHD could not agree to the request made by some tenants that the signing of tenancy agreements should take place at the FEHD offices in the public markets was because this was the work of FEHD's District Office, and the staffing of these offices was also too small to take up this additional task;
- (b) the original tenancy agreement already stipulated that tenants were responsible for the payment of rates in respect of the stalls, which was in line with the "user-pays" principle adopted by the Government in other public properties. In response to the serious concern of the Audit Commission and the Public Accounts Committee ("PAC") that the Administration had not collected the rates paid on behalf of stall tenants, the Food and Health Bureau and FEHD were in discussion with the Ratings and Valuation Department ("RVD") on the specific arrangements for assessing the rates of individual market stalls. As the assessment would involve considerable administrative work and human resources, it was estimated that the work required would take more than a year to complete. When the details of rates assessment were finalised, members' views on the specific arrangements for the recovery of rates would be sought again before deciding on the way forward; and
- (c) it was not unreasonable that the air-conditioning charges attributable to public areas such as passageways should be borne by market stall tenants as these public areas were an integral part of the market trading environment relating to the business of the stalls.

9. Whilst welcoming the Administration's decision to further extend the rental freeze of public market stalls for another year until 30 June 2011, Mr WONG Kwok-hing urged the Administration to also waive the hawker

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licence fee for another year. Mr WONG further said that the Administration should continue its long-standing practice of paying rates on behalf of market stall tenants, many of whom were resited hawkers. To do so, the Administration could change the terms of the public market tenancy agreement to stipulate that rental was inclusive of rates. Mr WONG was also of the view that stall tenants should only be responsible for the air-conditioning charges in respect of their stall areas.

10. USFH assured members that the Administration would not unilaterally require stall tenants to pay rates in respect of their stalls without first consulting the Panel. USFH further said that the amount of air-conditioning charges payable by each stall tenant for the common areas of the market was derived pro rata according to the area of individual stall versus the total area of all the stalls in the public market.

11. Mr Vincent FANG said that he was supportive of the alignment of public market tenancy agreements, but hoped that the Administration would take into account the historical background of public market stalls in determining market stall rentals. To respond to the recommendation of the Audit Commission and PAC that rates should be paid by stall tenants, Mr FANG suggested splitting the rental into rental and rates. Mr FANG further suggested charging stall tenants fixed air-conditioning charges, having regard to the poor maintenance of the air-conditioning system by the Administration which caused the cost to go up unreasonably. A case in point was that many unserviceable air curtain in public markets were often left unrepaired for an extended period of time.

12. USFH and DFEH responded as follows -

- (a) stall tenants whose tenancies were due to expire on 30 June 2010 would be charged the existing market rentals upon renewal, instead of open market rental ("OMR"), due to further extension of the rental freeze of public market stalls for another year until 30 June 2011. For successful transferees under the one-off tenancy transfer scheme, they would pay the actual average rental of stalls of the same category (e.g. wet goods stalls, meat stalls, cooked food stalls, etc.) in the same market, or the rental payable by the original tenant at the time of the transfer of tenancy, whichever was the higher. If there were more than 10 stalls of the same category in a market, one each of the highest and lowest rental-paying stalls would be excluded from the calculation of the actual average rental;
- (b) to split the rental into rental and rates would not address the issue that rates should be paid by stall tenants, as this would in effect tantamount to reducing the original rental; and

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- (c) malfunctioned air curtain would not cause air-conditioning cost to go up, as the temperature of public markets was set at a certain thermostat. It should also be stressed that separate charging of air-conditioning charges and rental was already adopted for over 70% of the tenants in air-conditioned markets, and no objection had been raised from these tenants about the recovery of air-conditioning charges by FEHD.

13. Mr LEUNG Yiu-chung said that the Administration should improve the operating environment of public markets, before asking stall tenants to bear air-conditioning charges. Mr LEUNG further said that instead of relying solely on RVD to assess OMR, a committee comprising stakeholders concerned should be set up by the Administration to do the same.

14. USFH responded that tenants were only responsible for the recurrent air-conditioning expenses, i.e. for electricity and daily maintenance, pertaining to their stall and the common area of public markets, whereas capital costs for installing the air-conditioning system, major repair works for the air-conditioning system, as well as air-conditioning charges for vacant stalls and FEHD offices in public markets were borne by the Administration.

15. Mr Tommy CHEUNG shared the view that the foremost task of the Administration was to first improve the operating environment of public markets. Such a view was also contained in the motion on "Supporting the market for traders running small businesses" moved by him and carried at the Council meeting on 17 March 2010. Mr CHEUNG further said that as the consensus view of the Panel was for the Administration to continue its practice to pay rates on behalf of stall tenants, he did not see the need for the Administration to come back to the Panel one year later to seek members' views on the specific arrangements for the recovery of rates.

16. The Chairman urged the Administration to consider excluding certain public areas of markets such as toilets, which were not directly related to the operation of the stalls, from the amount of air-conditioning charges payable by each stall tenant, so as to reduce the operating cost of stall tenants. The Chairman further asked about the measures which would be implemented by FEHD to eradicate the problem of stall subletting, apart from the implementation of the one-off tenancy transfer scheme.

17. DFEH responded that FEHD only recovered from stall tenants the air-conditioning charges attributable to those public areas of markets which were related to the operation of the stalls. Nevertheless, he agreed to examine which public areas in the markets could be excluded from recovering air-conditioning charges from stall tenants. To tackle the problem of stall subletting, DFEH said that a tenant was required to display conspicuously at the stall the Business Registration Certificate issued in his/her name. In case FEHD called upon the tenant for an interview for the purpose of execution of the public market tenancy

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agreement, the tenant must comply with such request within 14 days unless the tenant had submitted a reason which was acceptable to FEHD. Furthermore, a tenant should not cease or suspend business at the stall for seven days or more in any one calendar month without the prior consent of FEHD.

Motion

18. Mr WONG Kwok-hing moved a motion, seconded by Mr Vincent FANG, as follows -

"本事務委員會促請政府繼續代全港公眾街市商戶繳付差餉，以支援街市的小本經營。"

(Translation)

"That this Panel urges the Government to continue to pay the rates on behalf of public market stall tenants in the territory, so as to support small business operations in markets."

The Chairman put Mr WONG Kwok-hing's motion to vote. All members present at the meeting voted in favour of the motion. The Chairman declared that Mr WONG's motion was carried.

Holding of a special meeting

19. Mr WONG Kwok-hing suggested and members agreed to hold a special meeting on 3 May 2010 at 4:30 pm to listen to the views of HKFHA and 全港公共街市販商大聯盟 on the alignment of public market tenancy agreements by FEHD and its introduction of the one-off tenancy transfer scheme. Up to five representatives of each deputation would be invited to attend the special meeting. The Chairman said that should members wish to invite other organisations to give views on the matters after the meeting, they should inform the clerk for his consideration.

**V. Implementation of the Nutrition Labelling Scheme**

(LC Paper Nos. CB(2)1225/09-10(01) and CB(2)1230/09-10(05))

20. USFH briefed members on preparatory actions taken by the Administration for implementing the Nutritional Labelling Scheme ("the Scheme"), details of which were set out in the Administration's paper (LC Paper No. CB(2)1225/09-10(01)).

21. Dr Joseph LEE asked -

(a) what was the estimated number of prepackaged food products

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which would re-enter Hong Kong after the implementation of the Scheme on 1 July 2010; and

- (b) what actions would be taken to gauge behavioural changes in choosing prepackaged food products.

22. USFH and Controller, Centre for Food Safety ("Controller, CFS") responded as follows -

- (a) in order to understand the impact of the Scheme on food choice of consumers, CFS had commissioned an independent consultant to find out the quantity of different types of prepackaged food products available in various retail outlets before and after the commencement of the Scheme, and to assess the change in market situation. Furthermore, the surveys would assess the quantity of prepackaged food products that complied with the Scheme before 1 July 2010 and its subsequent changes. The first and second surveys were conducted from October 2009 to January 2010 and in March 2010 respectively. According to the survey results, the consultant estimated that there were a total of 73 000 prepackaged food products in the market that would be regulated by the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the Amendment Regulation"). Among the 2 360 prepackaged food products randomly selected, the first survey found that 47% had either already complied with the requirement in the Amendment Regulation, or had already obtained small volume exemption ("SVE"); and in the second survey the preliminary figure further increased to 57%. The third survey would be conducted in April 2011, and the whole survey project was expected to complete by the end of 2011. CFS would keep close contact with the trade in this regard; and
- (b) with the steer of the Task Force on Nutrition Labelling Education, which comprised members from various professional bodies, consumer group, food trade, academia and government departments, CFS formally launched the Publicity and Education Campaign on Nutrition Labelling ("the Campaign") in March 2009 and would assess its effectiveness through quantitative indicators (e.g. number of people visiting websites/attending workshops, number of publicity materials distributed). To provide a benchmark for comparison, a baseline survey was conducted in the summer of 2008 to assess public knowledge, attitude and practice regarding nutrition labelling. In 2011 (i.e. after the completion of the whole Campaign), CFS would conduct another survey for comparison with the baseline survey to evaluate the changes in public knowledge, attitude and practice regarding nutrition labelling.



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23. Dr LEUNG Ka-lau asked whether the trade would be allowed a grace period to make the necessary adjustments after the commencement of the Scheme on 1 July 2010.

24. USFH responded that market surveys revealed that the trade was generally ready. USFH further said that during the early stage of implementation, if a retailer was found not complying with the Amendment Regulation which would come into force on 1 July 2010, enforcement action would not be taken in the first instance. Instead, CFS would issue a letter to the retailer requiring him/her to give an explanation within 21 days on why he/she failed to comply with the new law. If the explanation given by the retailer was found to be unsatisfactory, a warning letter would be issued to the retailer who would be required to comply with the new law within 60 days.

25. On Dr LEUNG's further enquiry as to whether it was acceptable under the Amendment Regulation for a nutrition label to be affixed and not printed on a prepackaged food product, USFH replied in the positive.

26. Mr WONG Kwok-hing urged CFS to step up publicity to ensure the message reach target audience such as housewives. Controller, CFS responded that a wide range of communication means had been employed to ensure that information on the new law reach target groups effectively. Activities including group briefing sessions, roving exhibitions, health talks, mass media programmes (e.g. newspaper articles, Announcement of Public Interest on TV and radio), etc. were conducted. Efforts in this regard would be stepped up.

27. Mr Vincent FANG asked -

- (a) whether the market surveys conducted by the independent consultant on the impact of the Scheme on the availability of prepackaged food in Hong Kong before and after the commencement of the Scheme were designed to find out the availability of different types of prepackaged food such as ethnic food and organic food;
- (b) whether the survey results referred to in paragraph 12 of the Administration's paper that nearly 30% of the companies surveyed indicated that all of their products had already complied with the requirement of the Scheme, and over 50% of the companies surveyed indicated that more than 80% of their products had complied with the requirement of the Scheme were reliable. To his understanding, only a small of number of companies had responded to the survey;
- (c) whether consideration could be given to waiving traders from applying for SVE if the annual sales volume of the food concerned

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was very small, say, not more than 3 000 units, to facilitate the staging of food fair and promotion events for market testing purpose;

- (d) whether there was any room for lowering the \$345 exemption fee and the \$335 annual renewal fee for a food product charged under the SVE Scheme, having regard to the large number of applications for SVE;
- (e) whether local laboratories had the capacity to provide quality nutrient testing service; and
- (f) whether the complaints made by the trade about wide discrepancies in the results of nutrition tests conducted by different laboratories for the same food samples were resolved.

28. USFH and Controller, CFS responded as follows -

- (a) the market surveys conducted by the independent consultant on the impact of the Scheme on the availability of prepackaged food in Hong Kong before and after the commencement of the Scheme were designed to also find out the availability of different types of prepackaged food such as ethnic food, organic food and niche food products;
- (b) the questionnaire survey referred to in paragraph 12 of the Administration's paper was conducted by the Food Council and the Association of Green Organic at Living in February 2010 targeting mainly at small and medium food companies. Of the some 300 food companies invited to participate in the survey, about 50 had responded;
- (c) the inclusion of a SVE Scheme for food products with annual sales volume of 30 000 units or below in the Amendment Regulation was made in response to the call by the trade to facilitate the staging of food fair and promotion events held usually for market testing purpose. The Administration saw no justification to lower the annual sales volume eligible for SVE at this stage;
- (d) the \$345 exemption fee and the \$335 annual renewal fee for a food product charged under the SVE Scheme were calculated in strict accordance with the established formula approved by the Financial Services and the Treasury Bureau for calculating Government fees and charges;
- (e) according to the local private laboratories, their current workload for nutrient testing was below their maximum capacity and they

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were able to provide laboratory testing service for energy, the seven core nutrients, and some other nutrients, e.g. dietary fibre, cholesterol, vitamins. Moreover, the testing fee had dropped from \$4,000-\$7,000 to \$3,000-\$5,000 per food sample; and

- (f) a working group comprising the trade and laboratory service providers was set up by CFS in 2009 to facilitate compliance with the new law. During recent meetings of the working group, concern about wide discrepancies in the results of nutrition tests conducted by different laboratories for the same food samples was no longer raised by the trade. CFS would adopt a sampling plan for nutrition labelling compliance testing which would require at least 12 individually prepackaged consumer units to be taken randomly from the same lot in question and then combined to make a composite sample. Analysis results of the composite sample would be estimate of the lot nutrient content.

29. In response to Mr FANG's further enquiry on the impact of the Scheme on the importation of new prepackaged food products into Hong Kong, USFH considered that the impact should be minimal based on the assessment made by the trade on the number of prepackaged food products withdrawing from Hong Kong after the implementation of the Scheme. USFH further pointed out that many overseas countries already required all prepackaged foods to label their nutrition information, the content of some of which were more stringent than the requirements in the Amendment Regulation.

30. The Chairman said that apart from stepping up publicity campaign before the commencement of the Scheme, CFS should also inspect major retail outlets in June 2010 to find out how best the trade had complied with the requirements in the Amendment Regulation or had already obtained SVE. The Chairman further asked -

- (a) what measures would be taken by the Administration to ensure against food companies making claims such as "少甜" to circumvent the requirements in the Amendment Regulation; and
- (b) why the annual renewal fee was only \$10 less than the exemption fee under the SVE Scheme.

31. USFH responded as follows -

- (a) the independent consultant would conduct a third market survey in April 2010 to find out the quantity of different types of prepackaged food products in various retail outlets. Flexibility would be allowed for food traders to comply with the new law, details of which were set out in paragraph 24 above;

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- (b) the best way to address food companies making claims such as "少甜" to circumvent the requirements in the Amendment Regulation was to encourage the public to choose healthy food and achieve a balanced diet by making use of nutrition labels. To this end, for instance, CFS and the Consumer Council would jointly publish a series of articles on nutrition labelling in the Choice Magazine to facilitate the public in making good use of nutrition labels in choosing prepackaged food products. The launching article of the series featured instant noodles. The study, which was released in the March issue, looked into the nutrition label information of 48 instant noodle samples, in particular, their sodium, total fats and saturated fats contents were examined; and
- (c) the procedures involved to process an renewal application for SVE were no less than that for processing an exemption for SVE.

32. In closing, the Chairman said that the Panel would continue to monitor the implementation of the Scheme.

33. There being no other business, the meeting ended at 4:15 pm.

Council Business Division 2  
Legislative Council Secretariat  
5 May 2010