

立法會
Legislative Council

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LC Paper No. CB(2)113/10-11
(These minutes have been seen
by the Administration)

Panel on Food Safety and Environmental Hygiene

**Minutes of special meeting
held on Monday, 21 June 2010, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP (Deputy 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
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon KAM Nai-wai, MH
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
- Members attending** : Hon James TO Kun-sun
Hon IP Kwok-him, GBS, JP
- Member absent** : Hon WONG Kwok-hing, MH
Dr Hon LEUNG Ka-lau
- Public Officers attending** : Item I

Mr Raymond YOUNG Lap-moon
Permanent Secretary for Home Affairs

Mr CHEUK Wing-hing
Director of Food and Environmental Hygiene

Mr LO Fu-wai
Deputy Director of Food and Environmental Hygiene
(Acting)

Mr Peter Geoffrey HUNT
Assistant Commissioner of Police (Support)

Mr Eric CHENG Tak-ming
Superintendent (Licensing Office)

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

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

Ms Sandy HAU
Legislative Assistant (2)5

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I. Enforcement actions under the Places of Public Entertainment Ordinance (Cap. 172)

(LC Paper Nos. CB(2) CB(2)1777/09-10(01) & (02), CB(2)1863/09-10(01) and CB(2)1882/09-10(01) & (02))

Mr KAM Nai-wai asked the Administration why no principal official under the accountability system attended the meeting to answer questions from Members. Permanent Secretary for Home Affairs ("PSHA") explained that this was because the issue for discussion did not involve any policy aspect. Mr KAM expressed strong dissatisfaction at the Administration's response, as the removal of statues and a relief displayed by the Hong Kong Alliance in Support of Patriotic Democratic Movements in China ("organisers") at Times Square, Causeway Bay by the Food and Environmental Hygiene Department ("FEHD") on 29 and 30 May 2010 under the Places of Public Entertainment Ordinance (Cap. 172) ("PPEO") involved a policy change in the enforcement of PPEO.

2. PSHA then briefed Members on the current enforcement of PPEO, details of which were set out in the Administration's paper (LC Paper No. CB(2) 1863/09-10(01)).

3. The Chairman drew Members' attention to a letter dated 5 June 2010 from Mr Alan LEONG to the Secretary for Food and Health ("SFH") concerning the removal of statues and a relief displayed by the organisers at Times Square, Causeway Bay by FEHD on 29 and 30 May 2010 under PPEO tabled at the meeting.

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(*Post-meeting note:* The above letter was issued to members vide LC Paper No. CB(2)1882/09-10 on 21 June 2010.)

4. Mr KAM Nai-wai asked -

- (a) when did FEHD know that a statue and a relief would be displayed in the public place at Times Square, Causeway Bay on 29 May 2010, having regard to its preparedness to remove these exhibits from the site in the morning on that day;
- (b) whether FEHD had in the past removed and seized exhibits at places of public entertainment from any person/organisation failing to obtain a temporary Places of Public Entertainment Licence ("PPEL"); and
- (c) what was the Government's information source that Times Square management had rejected the request of the organisers to hold activities in the public place at Times Square on 29 May 2010.

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

- (a) FEHD learnt from a newspaper report on 24 May 2010 that the organisers intended to display a statue and a relief in the public place at Times Square on 29 May 2010;
- (b) that FEHD learnt about the organisers' intention to display a statue and a relief in the public place at Times Square on 29 May 2010 did not mean their removal that day at Times Square had been pre-determined. On 29 May, upon the organisers' confirmation that the statue and relief were intended for display at Times Square, FEHD officers asked the organisers not to unload the items from the delivering truck, lest they should breach PPEO for displaying exhibits in a public place without an PPEL. The organisers unloaded the items regardless and FEHD officers gave repeated warnings to the organisers to leave with their items. After the warnings went unheeded, FEHD officers took summons action under PPEO. Since the organisers still refused to remove the exhibits, the Police then repeatedly warned the organisers to cease committing the offence and to remove the exhibits. However, these warnings were ignored. The Police then attempted to take action to prevent the continuation of the offence and to seize the exhibits. FEHD and the Police handled the display on 30 May in a similar manner;

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- (c) PPEO empowered FEHD to issue or refuse to grant a temporary/permanent PPEL and to take summons action against places of public entertainment operated without a licence where warranted. The removal and seizure of exhibits unlawfully displayed, if necessary, were enforced by the Police under the laws; and
- (d) FEHD learnt from some newspaper reports that the Times Square management had rejected the request of the organisers to hold activities in the public place at Times Square both verbally and in writing on public safety grounds, as two other commercial activities, which had already obtained the relevant licence from FEHD under PPEO, would be held at the same venue for a duration overlapping the period intended by the organisers. The management had all along declined requests for holding activities of a political nature in the public area at Times Square.

6. Mr Alan LEONG said that relevant Principal Officials, instead of civil servants, should attend the meeting to answer questions from Members, having regard to the wide public concern about the suspected use of PPEO by the Government to suppress political activities. Mr LEONG then asked the following questions raised in his letter dated 5 June 2010 to SFH which hitherto remained unanswered by SFH -

- (a) whether it was the established practice of FEHD to hold inter-departmental meeting with the Home Affairs Department ("HAD") and the Lands Department ("LandsD") in dealing with cases involving controversial protest materials, as mentioned by a group of staff from FEHD to whom Mr LEONG had referred in his letter to SFH;
- (b) what was the earliest date/time that the Administration decided to order the organisers to leave with their items at Times Square on 29 May 2010, which government departments were involved in making the decision and which public officer ultimately made the decision;
- (c) whether legal advice had been sought before making the decision in (b) above; and if so, what the legal advice was; and
- (d) why the Administration did not take enforcement action against the display of a similar statue at Times Square by the Hong Kong Federation of Students to commemorate the June 4 incident in 2009.

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7. DFEH responded as follows -

- (a) FEHD would hold inter-departmental meeting with HAD and LandsD in dealing with unauthorised display of posters and banners on Government lands. As the display of exhibits by the organisers at Times Square did not involve Government lands, no such meeting had been held;
- (b) that no inter-departmental meeting had been held by FEHD should not be construed to mean that the enforcement action taken by FEHD on 29 May 2010 at Times Square had been pre-determined for the above reason and those given in paragraph 5(b) above;
- (c) the nine FEHD staff who participated in the operations on 29 and 30 May 2010 at Times Square were mainly health inspectors. All of them had indicated that they did not belong to the group to which Mr Alan LEONG had referred in his letter dated 5 June 2010 to SFH;
- (d) no enforcement action was taken by FEHD against the display of a similar statue at Times Square in 2009 because the activity concerned was a sit-in and the display of statues was not intended for an exhibition. Under PPEO, any person who kept or used any place for presenting or carrying on the types of entertainment specified under Schedule 1 of PPEO, whether the general public were admitted with or without payment, was required to apply for a licence. The types of entertainment included, among others, an exhibition of any one or more of the following, namely pictures, photographs, books, manuscripts, or other documents or other things. The licensing authority of PPEO was the Secretary for Home Affairs. Specific officers of FEHD were authorised to issue or cancel any licence or exercise any other functions relating to the licensing matter under PPEO. The licensing functions and duties under PPEO were therefore carried out by FEHD. In 2009, FEHD received about 1 200 temporary PPEL applications and 30 full PPEL applications; and
- (e) FEHD had consulted the Department on Justice ("DoJ") the applicability of PPEO to the organisers before taking enforcement action on 29 May 2010.

8. Mr Alan LEONG sought clarification on the Administration's response in paragraph 7(c) above. He requested the Administration to provide a written response, setting out the details of the legal advice sought from DoJ, including what the legal advice was, in what way and when the legal advice was provided, as well as the capacity of the public officer who provided the legal advice.

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9. Responding to Mr James TO's enquiry as to whether the Police had a chance to read the legal advice sought by FEHD, Assistant Commissioner of Police (Support) ("ACP") said that under normal circumstances, a legal advice given to a specific department was not allowed to be shared with other departments.

10. Mr James TO said that it was obvious that the statue and the relief displayed by the organisers at Times Square on 29 May 2010 were not intended for an exhibition but to express the organisers' stance on the 4 June incident. Even if FEHD took the words of the organisers that the items were for an exhibition, it should be blatantly clear to all that the intention of the organisers in displaying another statue at Times Square on 30 May 2010 was to express their stance on the 4 June incident. Hence, it was inappropriate for FEHD to use PPEO to order the organisers to leave Times Square with their items. His view was echoed by Mr KAM Nai-wai and Mr Alan LEONG. Mr TO further quoted a ruling made by the court some years ago concerning demonstrations staged by Falun Gong practitioners to illustrate his point that PPEO should not apply to the display of politically sensitive materials.

11. DFEH responded that the case mentioned by Mr James TO was different from the case under discussion. In the case about Falun Gong practitioners who staged daily sit-in demonstrations and placed large banners and display boards at the spot, the court had ruled that it was inappropriate to apply the provisions in the Public Health and Municipal Services Ordinance (Cap. 132) to prosecute the Falun Gong practitioners for unauthorised display of bills or posters. As regards the operations on 29 and 30 May 2010, when warnings given to the organisers to stop the continuation of a PPEO offence were ignored, the Police then took actions to remove the exhibits in the public place at Times Square and when obstructed, made arrests. DFEH reiterated that the organisers had made it clear to the Times Square management and FEHD officers that the statue and the relief were for display at an exhibition at Times Square between 29 May 2010 and 3 June 2010, and the exhibits would be moved to the Victoria Park for display after the said period.

12. PSHA added that PPEO was enacted to ensure public safety with regard to building, hygiene, fire and ventilation aspects, as well as law and order within the premises. Under PPEO, an exhibition held in any place capable of accommodating the public (including an exhibition of pictures, photographs or things) was defined as an entertainment; and any persons who kept or used any place for presenting or carrying on a public entertainment were required to apply for a PPEL from FEHD. In the light of this, the display of the statue and the relief at an exhibition at Times Square fell within the purview of PPEO. Whether or not the organisers wished to make use of the exhibition to express their political stance was irrelevant.

13. Dr Joseph LEE noted that the Administration would conduct an internal review on the operations conducted on 29 and 30 May 2010 to enforce PPEO at

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Times Square, Causeway Bay, before seeking legal advice on whether to prosecute the organisers for breach of the peace or other offence. He requested the Administration to provide the Panel with the results of its review. Dr LEE then raised the following questions -

- (a) whether the FEHD officers in-charge of the operations on 29 and 30 May 2010 had reported the matter to their superiors before taking enforcement actions at Times Square; and
- (b) how the Police removed the exhibits, whether the transfer of the exhibits were done by police or FEHD vehicles.

14. DFEH responded that -

- (a) there was no internal investigation by the department, as suggested by Dr LEE;
- (b) FEHD and the Police had assessed beforehand the back-up required if actions had to be taken to remove the exhibits from Times Square. It was agreed that FEHD would arrange for its contractor to collect and take away the exhibits, if and when the organisers refused to do so; and
- (c) the district Superintendent of Environmental Hygiene was in command of FEHD's operations on 29 and 30 May. The decision to take enforcement actions was made by enforcement staff having regard to circumstances on the ground.

15. ACP added that -

- (a) when the organisers indicated such an intention to display some exhibits at Times Square, Causeway Bay between 29 May 2010 and 3 June 2010, the Police had made it clear to the organisers that they needed to apply for a PPEL from FEHD and obtain the relevant approval/consent from the Times Square management;
- (b) it was the normal practice for the Police to put in place contingency plans to deal with any unforeseeable incidents. Before the operations on 29 and 30 May 2010, the Police had held several rounds of discussion with FEHD; and
- (c) as explained earlier, after giving repeated warnings to the organisers to leave with their items but to no avail, FEHD officers took summons action. Since the organisers still refused to remove the exhibits, the Police then repeatedly gave warnings to the organisers and asked them to cease committing the offence and remove the exhibits. However, these warnings were ignored.

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The Police thus attempted to take action in accordance with the power conferred under sections 10 and 50 of the Police Force Ordinance (Cap. 232) to prevent the continuation of the offence and to seize the exhibits. When this action was obstructed, the Police took arrest action for wilfully obstructing a Police officer in the execution of his duties.

16. Responding to Mr KAM's enquiry, ACP said that the order to remove the exhibits and to take arrest action was made by an Acting Chief Superintendent of Police, who was then the District Commander of Wanchai, having regard to the circumstances at the scene.

17. Mr James TO queried whether the Police was consistent in its enforcement of the law, as the incident had given him an impression that the Police's decision to remove the exhibits at Times Square on 29 May 2010 was not based on the Police's independent judgment. He asked whether it was the Police's or FEHD's view that the exhibits were structurally unsafe, posing immediate danger to the public.

18. ACP responded that on 29 May 2010, it was FEHD officers who inspected and determined whether an offence under PPEO had been committed. As the organisers had not obtained the requisite PPEL and after giving repeated warnings to the organisers to leave with their items to no avail, FEHD officers took summons action. Since the organisers refused to leave the Times Square with the exhibits, the Police gave warnings repeatedly to the organisers to prevent the continuation of the offence. However, these warnings were ignored. The Police then took steps to remove the exhibits and when obstructed, it took arrest action and subsequently seized and removed the exhibits.

19. Mr James TO expressed dissatisfaction at the Administration's response. He held the view that the Police had not exercised its own judgment before taking arrest action and removing the exhibits. It was also inappropriate for the Police to rely on FEHD officers in assessing whether the statue and the relief displayed by the organisers at Times Square on 29 May 2010 were intended for an exhibition, and whether the items concerned were unsafe for display purpose. He queried whether the motive of the Administration was to suppress political activities.

20. In response, ACP reiterated that the order to remove the exhibits and to take arrest action was made by the District Commander in-charge of Wanchai, who was a very experienced Police officer. ACP assured Members that the District Commander had exercised an independent judgment, based on the legal advice provided to him and the relevant evidence as well as the facts available at the scene. There was no question of anyone influencing the Police's decision to maintain law and order and to prevent any breach of the peace or other offence.

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21. The Chairman said that the fact that FEHD learnt from newspaper reports on 24 May 2010 that the organisers intended to display a statue and a relief in the public place at Times Square on 29 May 2010 and the way how FEHD and the Police handled the matter afterwards might arouse suspicion as to whether FEHD had acted impartially, independent from undue influence or pressure exerted by the Chief Executive ("CE") or the Central Authorities. He queried whether it was a standing practice that FEHD would plan enforcement actions based on information taken from newspaper reports.

22. DFEH responded that, as per normal Government practice, FEHD had a dedicated team responsible for monitoring local news relevant to the work of FEHD. If the circumstances warranted, FEHD would, as in many cases involving obstruction and nuisances caused by illegal shop extensions, take prompt and appropriate enforcement actions based on the information revealed in the newspaper reports. As for the removal of exhibits at Times Square, no one from the CE's Office or the local representative of the Central Authorities had ever talked to him on this matter.

Admin 23. Mr KAM Nai-wai requested the Administration to provide a chronology of events relevant to the operations at Times Square on 29 and 30 May 2010, including the course of actions taken on the date when FEHD learnt about the organisers' intention to display some exhibits at Times Square.

Admin 24. The Chairman, Mr KAM Nai-wai and Mr Alan LEONG noted with deep concern that the organisers subsequently requested the return of the exhibits, and the Police had returned the exhibits upon the organisers' undertaking to follow certain police requirements. They asked whether it was a usual practice for the Police to require the organisers to sign an undertaking to ensure compliance. They requested the Police to provide the Panel with a copy of the undertaking.

25. In response, ACP advised that asking the organisers to sign an undertaking was a reasonable measure to prevent the continuation of the offence and to ensure their compliance with PPEO. The declaration requirement was taken based on legal advice obtained from DoJ. The organisers, however, declined to sign the undertaking. They informed the Police that the exhibits would be moved to the Victoria Park for display, and an application had already been filed with the Leisure and Cultural Services Department ("LCSD") to use the Victoria Park from 2 to 4 June 2010 for staging an assembly. According to the organisers, they had provided LCSD with certification issued by authorised persons/registered structural engineers for exhibits exceeding 1.7 meter tall, undertaken to take out sufficient public liability insurance for the event including the exhibits, and made arrangement to place the exhibits concerned in isolation from the crowd to ensure safety.

26. Mr KAM Nai-wai considered the operations conducted on 29 and 30 May 2010 to enforce PPEO at Times Square an act out of the ordinary. He queried whether any government officials had second guessed the wish of their

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superiors and accordingly ordered enforcement actions against the organisers.

27. DFEH categorically rejected the assertion and stressed that, in the operations under discussion, FEHD officers exercised their own judgment in assessing the need for enforcement actions. Citing FEHD's recent removal of 160 unauthorised banners put up by 政改向前走大聯盟 to promote a procession convened for 19 June to support Government's constitutional reform proposals, DFEH said that it was a clear manifestation that FEHD did not second guess the wish of superiors in taking enforcement actions.

28. Mr WONG Yuk-man expressed grave concern and used the expression "dog official" ("狗官") that the Government was trying to make use of PPEO to suppress political activities. He said that the operations by FEHD and the Police at Times Square, Causeway Bay on 29 and 30 May 2010 had reflected the intention of the Government to tighten the freedom of speech in Hong Kong. He criticised the Police for abuse of power, particularly in the course of taking enforcement actions against participants of public meetings and processions.

29. DFEH requested the Chairman to ask Mr WONG to withdraw his offensive remarks. The Chairman said that he had no power to ask a Member to leave the meeting under such circumstances.

30. ACP responded with the following points -

- (a) the Police took allegations of abuse of power against Police officers seriously. If any Police officer was found to have abused his power, proper action would be taken;
- (b) on 29 and 30 May 2010, the Police attempted to take action to prevent the organisers from continuing the offence. When this action was obstructed, the Police took arrest action for wilfully obstructing public officers in the execution of their duties;
- (c) as the case was sub judice, the Police would submit all relevant information to DoJ for review. The matter would definitely be handled in a fair, open and transparent manner; and
- (d) the Police had no intention to suppress any activities, as far as they were in compliance with the existing legislations. The removal of the exhibits at the Times Square was necessary and was in accordance with law and established procedures.

31. Mr WONG Yung-kan noted that public safety was the Government's priority in enforcing PPEO. He asked whether there were objective yardsticks for assessing the safety of an exhibit to be displayed in public places.

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32. PSHA reiterated that PPEO was enacted to ensure public safety with regard to building, hygiene, fire and ventilation aspects, as well as law and order within the premises. Any person who wished to keep or use any place of public entertainment should submit an application to FEHD. In considering each application, FEHD would consult the departments concerned as appropriate in order to ensure public safety with regard to the aspects highlighted above. When the applicant complied with all the licensing requirements, FEHD would issue the licence.

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33. Mr Alan LEONG requested the Administration to provide information on applications for PPEL, for the display of art items.

34. Mr James TO remained of the view that it was inappropriate for FEHD to use PPEO to order the removal of exhibits when the items were intended to express the organisers' political stance. He considered that the Administration, notably FEHD, should review its enforcement strategy against the display of exhibits in public places.

35. Concluding the discussion, the Chairman said that most Members attending the meeting were not convinced of the need to remove the exhibits at Times Square on 29 and 30 May 2010. He requested the Administration to take note of Members' views and concerns and provide the Panel with the requested information after the meeting.

36. There being no other business, the meeting ended at 10:33 am.