

16 May 2011

Mr Clement Leung JP
Director of Food and Environmental Hygiene
44/F Queensway Government Offices,
66 Queensway,
Hong Kong.

Dear Sir,

Food Licensing Officers causing harassment & acting beyond their legal authority

I wish to register a complaint against unidentified Food and Environmental Hygiene Department licensing officers who have been exceeding their authority by warning the owners and staff of Licensed Food Factories ("take-away" businesses) to interfere with dog owners who wish to sit with their dogs at nearby tables in a private area and to which the public are admitted. This is undue unlawful harassment of both the food factory licence holders and of their customers.

I am perfectly aware of sections 10B and 34C of CAP 132X of the Food Business Regulations (copied below) which prohibit dogs from being taken into licensed food premises and which prohibit food license holders from conducting business beyond the confines of the official layout respectively.

Please, however, note the following:-

1. If a customer enters and purchases food from a licensed food factory ("take away") and then takes the food outside the licensed premises to consume it at a nearby table in a public place or a privately owned place to which the public are admitted, **no offence is committed** either by the food factory license holder or by the customer under the food licensing regulations. The same situation also applies to food ordered inside the premises and then delivered to a location not within the licensed premises.
2. If tables and chairs have been placed in a position near to a licensed food factory for the convenience of customers, the use of those tables for their consumption of take-away food is **not subject to controls under your regulations** provided the food business has been conducted inside the licensed premises and the food is taken out of the licensed premises.
3. If customers from the licensed food factory consume their purchases outside the food factory on tables positioned for their convenience it is **NOT an offence to have a dog at this location**. This situation is **not subject to Regulation 10B because the dog is NOT WITHIN the licensed premises**.
4. On 16 may 2011 the staff of the explained that your officers had just recently "warned" them that they were "breaking the law" by permitting dogs to be in the vicinity of nearby tables which are not within the licensed premises and that "if this was seen again the tables would be removed". The officer , who reportedly made this statement, if the report is verified, was acting beyond his lawful

authority and needs to study the regulations carefully. His statement about “forbidding” and “removing the tables” from a private place (Discovery Bay) if he in future witnesses a dog in the vicinity thereof is ultra vires.

I wish to have your assurance that your officers will stop acting beyond their jurisdiction and that as a dog owner I will not be harassed by food factory owners and their staff who are being inappropriately pressured by your officers to turn way dog owners from public tables located near to their licensed premises. If I do not receive this assurance I shall take my complaint to the Ombudsman.

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| Chapter: | 132X | Title: | FOOD BUSINESS REGULATION | Gazette Number: | L.N. 320 of 1999 |
| Section: | 10B | Heading: | Prohibition of dogs on food premises | Version Date: | 01/01/2000 |

(1) No person shall bring any dog **onto** any food premises.

(2) No person engaged in any food business shall knowingly suffer or permit the presence of any dog **on** any food premises.

(3) Nothing in this section shall be construed to prohibit the presence on any food premises (other than a food room) of a dog serving as a guide for a totally or partially blind person, or to prohibit the presence on any food premises of a dog in connection with the exercise of a lawful power. (78 of 1999 s. 7)

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

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.

Finally it is time your department became attuned to the desires of Hong Kong's modern population. People do not wish to be confined inside air-conditioned premises to eat their meals and it is also perfectly acceptable to a majority of people that they should be permitted to take their pets along when eating at outside locations.

Yours faithfully,

P. A. Crush

c.c. Hon Mr Tommy Cheung Yu-yan SBS JP , Hon Wong Yung-kan SBS, Hon Andrew Cheng Kar-foo, Hon Tam Yiu-chung GBS JP, Ms Amy Yung, Islands District Council, Mr Tony Cheng , Gen Manager DB Service Delivery., Mr. Colin Boshier, Chairman Discovery Bay COC.