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Legislative Council

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Panel on Home Affairs

Information note prepared by the Legislative Council Secretariat for the meeting on 24 March 2014

Illegal shop front extension

According to the Administration, illegal extension of business by shops is a street management problem which falls within the purview of a number of Government departments as follows -

- (a) the Food and Environmental Hygiene Department ("FEHD") can take enforcement actions against extension of business areas or illegal hawking by invoking relevant ordinances including (i) under section 4A of the Summary Offences Ordinance (Cap. 228), FEHD may institute prosecutions against shops which extend its business without authorization and cause obstruction of public places; (ii) under section 22 of the Public Health and Municipal Services Ordinance (Cap. 132), FEHD may institute prosecution against shops which place any articles in public places and cause obstruction to scavenging operations; and (iii) under section 34C of the Food Business Regulation (Cap. 132X), FEHD may institute prosecution against licensed food premises that carry on business illegally beyond the confines of their premises;
- (b) the Lands Department ("LandsD") and the Buildings Department ("BD"), by invoking the Lands (Miscellaneous Provisions) Ordinance (Cap. 28) and the Buildings Ordinance (Cap. 123), can curb shop front extensions which are illegally erected on private or government land, including overhead projections or ground level encroachments such as extended side posts and floor slabs; and
- (c) the Home Affairs Department ("HAD") is responsible for coordinating joint-departmental operations in districts where illegal shop front extension is regarded as a serious problem by the District Management Committee, which is chaired by the District

Officer and consists of representatives of the core departments in the districts including FEHD, LandsD, BD, District Office under HAD, Police and Highways Department.

2. According to the press release issued by the Office of The Ombudsman ("The Ombudsman") dated 17 July 2013, The Ombudsman received frequently complaints about street obstruction, including perennial occupation of pedestrian passageways by goods, illegal hawking in public places by shop operators, and erection of unauthorized structures by shops. Noting that the problem had persisted and appeared to be getting worse, The Ombudsman questioned that the regulatory measures and enforcement actions taken by the Administration against street obstruction by shops were not effective, and decided to initiate a direct investigation.

3. While The Ombudsman has yet to release the direct investigation report relating to street obstruction by shops, another direct investigation report entitled "Regulatory Measures and Enforcement Actions against Illegal Extension of Business Area by Restaurants" was completed in March 2013 ("the Ombudsman Report"). In the Ombudsman Report, FEHD was criticized for failing to effectively curb or contain illegal extension of business area by restaurants and LandsD for its failure to make adequate efforts to take enforcement actions against illegal occupation of Government land by restaurants. In The Ombudsman's view, FEHD had not set objectives and formulated strategies for enforcement actions and as a result, its enforcement actions had been superficial and produced little results to curb the problem. The recommendations made by The Ombudsman to the Administration are set out in **Appendix I**.

4. The subject of illegal shop front extension has not been discussed by the Panel on Home Affairs ("the HA Panel") nor the Panel on Food Safety and Environmental Hygiene ("the FSEH Panel"). However, three written questions relating to the illegal extension of business area by some restaurants and shops were raised at the Council meetings of 28 November 2012, 5 June and 27 November 2013 respectively. The questions and the Administration's replies are in **Appendices II, III and IV** respectively.

5. The Administration will brief the HA Panel on the Government's plan to enhance the enforcement against illegal shop front extension at the meeting on 24 March 2014. Members of the Panel on Commerce and Industry and members of the FSEH Panel are invited to join the discussion.

**Extract from the Executive Summary of Direct Investigation on
Regulatory Measures and Enforcement Actions against
Illegal Extension of Business Area by Restaurants**

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Recommendations

26. The Ombudsman makes the following recommendations to FEHD and Lands D:

FEHD

- (1) to actively explore the best use of existing resources and relevant legislation, consider setting up a taskforce comprising HIs and HCOs, deploying more manpower and using diverse strategies to deal with unauthorised food operations in public places; before these could be implemented, to allow HCOs more participation in dealing with the problem so as to increase the Department's enforcement strength;
- (2) based on the situation of each district, to set objectives and formulate strategies for tackling illegal extension of business area by restaurants;
- (3) to conduct targeted raids on recalcitrant offenders, taking more frequent enforcement actions against them, making arrests and seizure of articles;
- (4) to exercise more stringent control on those unlicensed restaurants which persistently extend their business area outside their premises, conducting more frequent inspections and bringing more prosecutions, applying for closure orders from the Court, as well as publicizing information about those restaurants through the media and uploading such information on FEHD's website for easy public access;
- (5) to continue to submit charge records of offenders to the Court in the hope that it would impose heavier penalties on them;

- (6) to consult the District Councils, which represent the local communities, on its enforcement plans, seek their views and support for the purpose of gaining public recognition and reducing resistance from those who are benefiting from illegal operations;
- (7) to consider amending the relevant legislation to simplify the mechanism for appeal against suspension or cancellation of licences from three-tier to two-tier;
- (8) except under very special circumstances, to refrain from withholding the suspension or cancellation of licences pending appeals by restaurant licensees; to draw up relevant assessment criteria and procedures;
- (9) to consider extending the applicability of the non-standard licensing requirements of prohibiting encroachment on Government land or common passageways to all premises under application for restaurant licences;
- (10) to lengthen the “observation period” before the issuance of provisional licence;
- (11) in respect of an applicant whose restaurant licence has previously been cancelled due to repeated offences, to refuse to process, for a specified period of time, his/her application, or an application made by his/her representative, for any restaurant or related licence in relation to the same premises;
- (12) to consider, in the long term, how to restrict applications from recalcitrant offenders for restaurant or related licences in relation to any premises;
- (13) to suggest to District Councils the designation of spots for alfresco dining in suitable areas, and to facilitate applications from restaurant operators for setting up outside seating accommodation at those spots;
- (14) to deliberate with Home Affairs Department on how to balance stakeholders’ interests with regard to public consultation on applications for setting up outside seating accommodation;

Lands D

- (15) to study with the Department of Justice how to more effectively exercise statutory powers to deal with illegal occupation of

Government land by restaurants, in fulfilment of its responsibility as land administrator;

- (16) subject to the outcome of their study, to actively support FEHD in rigorous actions against recalcitrant offenders; and
- (17) subject to the outcome of their study, to review with SCDA the arrangement whereby Lands D only deals with illegal occupation of Government land involving structures of a “more permanent nature”.

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Appendix II

Press Releases

LCQ11: Unauthorised extension of business

Following is a question by the Hon Chan Han-pan and a written reply by the Secretary for Food and Health, Dr Ko Wing-man, in the Legislative Council today (November 28):

Question:

Quite a number of members of the public have lodged complaints with me about the unauthorised extension of business area by some restaurants and shops in the vicinity of their residences, which has caused not only noise and environmental hygiene nuisances but also the concern that the arrangements made by some restaurants for their customers to use naked flame for hot pot meals on road sides might pose fire hazards. These residents have also pointed out that although the Government has taken law enforcement actions, the problems have not actually been resolved. In this connection, will the Government inform this Council:

(a) of the details of the measures and law enforcement actions taken by the Food and Environmental Hygiene Department in respect of the aforesaid problems in the past five years (together with the number of prosecutions instituted);

(b) whether the Police had taken any law enforcement actions under section 4 (Nuisances and miscellaneous offences), section 4A (Obstruction of public places) and section 32 (Removal of filth, etc., and recovery of expenses) of the Summary Offences Ordinance (Cap. 228) in respect of the aforesaid problems in the past five years; if so, of the details; if not, the reasons for that;

(c) whether the Fire Services Department had followed up in the past five years the problem of restaurants making arrangements for customers to use naked flame for hot pot meals on road sides; if so, of the details; if not, the reasons for that; and

(d) given that the Office of The Ombudsman issued in this year an investigation report on the complaint against three government departments for failing to curb the unauthorised extension of business area by a hawker stall, of the details of the follow-up actions taken by the said departments in respect of the investigation report?

Reply:

President,

Unauthorised extension of business by shops, being a street management issue, falls within the purview of a number of government departments.

The core function of the Food and Environmental Hygiene Department (FEHD) is to upkeep environmental hygiene. Hence, it accords priority to handling cases causing obstruction to scavenging operations or cases relating to unauthorised extension of restaurants, and takes enforcement action in the light of circumstances on the ground. FEHD also actively participates in

joint inter-departmental operations co-ordinated by the Home Affairs Department (HAD), in concert with other relevant departments taking action under their respective mandate to curb such unauthorised activities.

Depending on the circumstances of individual cases, FEHD may take enforcement action in accordance with the following statutory provisions:

* regarding licensed restaurants that carry on business beyond the confines of their licensed premises, FEHD may institute prosecutions as appropriate against the licensees concerned under section 34C of the Food Business Regulation (Cap. 132X) for the offence of carrying on a food business otherwise than at the place delineated on the plan, or institute prosecutions under section 31(1)(b), as applicable to cases involving the conduct of restaurants by a non-licensee beyond the approved confines of the restaurants, as the case may be.

* for restaurants or shops which have extended their business illegally and caused obstruction on the street, FEHD may institute prosecutions under section 4A of the Summary Offences Ordinance (Cap. 228) for obstruction of public places; and

* for shops which have extended their business illegally and thus committed an offence of unlicensed hawking, FEHD may take enforcement action under section 83B of the Public Health and Municipal Services Ordinance (Cap. 132) for unlicensed hawking in the street.

My reply to the four parts of the question is as follows:

(a) FEHD is vigilant about tackling unauthorised extension of business area by restaurants and shops. On top of regular inspection, FEHD takes blitz prosecution action to combat such irregularities.

Table 1 gives the number of prosecutions instituted by FEHD against unauthorised extension of business area by restaurants in the past five years (from 2008 to September 2012).

FEHD keeps under review the effectiveness of measures taken to regulate the unauthorised extension of business area by restaurants, and rolls out targeted measures against repeat offenders in districts where the problem is serious, so as to enhance the effectiveness of our enforcement action. These measures include:

* stepping up inspection and taking targeted enforcement action;

* expediting the prosecution procedures and the execution of orders of licence suspension and cancellation;

* considering not to suspend the execution of orders of licence suspension or cancellation pending the determination of appeals, so as to guard against persistent unauthorised operations during the period of time when such orders are under appeal; and

* imposing in respect of applications for a provisional licence, an added requirement which stipulates that the applicants should not occupy areas beyond the confines of their premises. In case of breach, the provisional licence will not be issued. Should this requirement be breached after the issue of the provisional licence, a warning will be given to the licensee concerned

requesting rectification of the irregularities. If the same irregularities are detected again, the provisional licence will be cancelled immediately.

FEHD will continue to closely monitor the situation and review the effectiveness of its enforcement action, and introduce new measures where necessary. It will also take targeted enforcement action with reference to seasonal changes. For example, the department will step up, during the winter months, inspection of and enforcement action against restaurants providing food in season (e.g. hot pots).

Unauthorised extension of business by shops, being a street management issue, falls within the purview of a number of government departments. FEHD has actively participated in joint inter-departmental operations co-ordinated by HAD, in concert with other relevant departments taking action under their respective mandate to curb such unauthorised activities.

Over the past five years (from 2008 to September 2012), FEHD has instituted a total of 93 318 prosecutions against unauthorised extension of business by shops. Breakdown by year is set out in Table 2.

(b) According to the information provided by the Security Bureau, the Police will, in general, take joint enforcement action where necessary with the relevant government departments on request against restaurants and shops extending their business without authorisation, upon receipt of complaints about unauthorised extension of business of restaurants and shops. If the cases involve criminal activities, or may lead to a breach of public peace, pose immediate danger to the public or cause serious obstruction to traffic or road users, the Police will intervene proactively and take enforcement action. Generally speaking, restaurants or shops will be prosecuted for obstruction caused by unauthorised extension of business under section 4A of Cap. 228 (obstruction of public places). From January 2010 to June 2012, a total of 3 527 prosecutions were instituted by the Police under section 4A of Cap. 228. As for the number of prosecutions for unauthorised extension of restaurants and shops before 2010, the Police does not have the relevant statistics.

(c) For hot pot activities outside restaurants, if such activities cause obstruction to the means of escape or emergency vehicular access, or affect the normal operation of fire service installations and equipment, the Fire Services Department (FSD) will take enforcement action as appropriate in accordance with the Fire Services Ordinance (Cap. 95). Any unauthorised extension of business by restaurants identified during FSD inspection will be referred to FEHD for follow-up action.

(d) The Office of the Ombudsman issued this year an investigation report on a case of unauthorised extension of business area by a licensed stall in Kowloon, giving recommendations to the three relevant government departments which in its view had not resolved the problem in a timely manner. The departments concerned, including FEHD, the Buildings Department (BD) and the Lands Department (LandsD), have accepted the Ombudsman's recommendations and taken the following follow-up actions:

(i) In response to the recommendations of the Ombudsman, FEHD has stepped up enforcement action against the stall concerned. A total of 12 prosecutions were initiated by FEHD against the licensee of the stall from October 2011 to November 2012. In

early April 2012, the licensee removed the hawking paraphernalia in the unauthorised structures adjacent to the stall and ceased the unauthorised hawking activities. The illegal structures were also subsequently demolished;

(ii) BD has reviewed the case in response to the views of the Ombudsman. As the stall extending its business without authorisation was on unleased Government land, BD considered that it did not have the power to take enforcement action under the Buildings Ordinance (Cap. 123) against the stall. Nevertheless, BD has agreed that it should work closely with LandsD to tackle the issue of unauthorised building works on Government land. With regard to this case, BD and LandsD have come to a consensus that LandsD would handle the unauthorised structures on public pavement whilst BD would provide expertise advice on the demolition work; and

(iii) the relevant District Lands Office (DLO) under LandsD posted a notice under section 6(1) of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) on the unauthorised structures in March 2012, demanding the occupant to cease occupation of the Government land on or before the specified date. DLO's site inspection in June 2012 revealed that all the unauthorised structures on the Government land concerned had been demolished and that the clearance work had also been completed.

Ends/Wednesday, November 28, 2012
Issued at HKT 15:49

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Legislative Council Q11

Table 1

The number of prosecutions instituted by FEHD against unauthorised extension of food business in the past five years (from 2008 to September 2012)

No. of prosecutions under the relevant provisions \ Year	2008	2009	2010	2011	2012 (up to September)
Under section 34C of the Food Business Regulation (Cap. 132X) ^{note 1}	532	633	639	871	842
Under section 31(1)(b) of the Food Business Regulation (Cap. 132X) ^{note 2}	31	30	35	22	6
Under section 4A of the Summary Offences Ordinance (Cap. 228) ^{note 3}	1 648	1 801	1 556	1 736	797
Total	2 211	2 464	2 230	2 629	1 645

Note 1: Licensees carrying on business beyond the approved confines of their food premises.

Note 2: Non-licensees carrying on food business beyond the approved confines of food premises.

Note 3: Any person causing obstruction by placing any article in public places outside food premises.

Legislative Council Q11

Table 2

The breakdown by year of 93 318 prosecutions instituted by FEHD against unauthorised extension of business by shops over the past five years (from 2008 to September 2012)

Year No. of prosecutions under the relevant provisions	2008	2009	2010	2011	2012 (up to September)
Under section 4A of the Summary Offences Ordinance (Cap. 228) ^{note 1}					
Under section 83B of the Public Health and Municipal Services Ordinance (Cap. 132) ^{note 2}	16 365	18 637	20 077	22 137	16 102

Note 1: unauthorised extension of business to public places by shops, obstructing scavenging operations or causing a public health issue.

Note 2: unauthorised extension of business to public places by shops, constituting illegal hawking activities.

Appendix III

Press Releases

LCQ11: Illegal extension of business area by restaurants

Following is a question by the Hon Tien Puk-sun and a written reply by the Secretary for Food and Health, Dr Ko Wing-man, in the Legislative Council today (June 5):

Question:

The Food and Environmental Hygiene Department (FEHD) received 4 955 complaints against illegal extension of business area by restaurants last year, of which 3 645 cases were substantiated. However, the respective numbers of successful prosecutions instituted by FEHD under sections 31(1)(b) and 34C of the Food Business Regulation (Cap. 132 sub. leg. X) and section 4A of the Summary Offences Ordinance (Cap. 228) were 521, 847 and 894 only. The Office of The Ombudsman, Hong Kong pointed out in its direct investigation report published in March 2013 that FEHD's law enforcement actions had been "superficial and produced little results", and that the three-tier appeal mechanism under the "Demerit Points System" targeting at the acts of contravention of restaurant licensees was "cumbersome", resulting in the persistence of the problem of illegal extension of business area by restaurants. On the other hand, some members of the public have relayed to me that illegal extension of business area by restaurants not only causes obstruction to pavements and deterioration of the street environment, the noises so created also seriously affect the residents in the neighbourhood. In this connection, will the Government inform this Council:

(a) whether the authorities have comprehensively reviewed the law enforcement procedure and efforts on a regular basis to see if such procedure and efforts are sufficient to combat the problem of illegal extension of business area by restaurants;

(b) apart from the aforesaid laws, whether the authorities will consider instituting prosecutions, by invoking other relevant laws, e.g. those relating to cleanliness in public places and noise control, against illegal extension of business area by restaurants, so as to impose heavier penalties on the restaurants concerned, thereby enhancing the deterrent effect of law enforcement actions; and

(c) in respect of restaurant licensees who have been repeatedly convicted of the offence of illegal extension of business area, whether the authorities have considered increasing the penalties imposed on them, so as to enhance the deterrent effect (e.g. requesting the Court to increase the amount of fines, lowering the maximum accumulated demerit points required under the Demerit Points System for suspending or cancelling the licence of the restaurant concerned, as well as extending the duration of licence suspension or cancellation)?

Reply:

President,

The Food and Environmental Hygiene Department (FEHD) is vigilant about illegal extension of business area by restaurants

and takes enforcement actions in the light of the actual circumstances. On top of regular inspection, the FEHD also takes blitz prosecution from time to time to combat such irregularities. Depending on the circumstances of individual cases, the FEHD may take enforcement action in accordance with the following statutory provisions:

* in cases where licensed restaurants carry on business beyond the confines of their licensed premises, the FEHD may institute prosecutions as appropriate against the licensees concerned under section 34C of the Food Business Regulation (Cap. 132X) for the offence of carrying on a food business otherwise than at the place delineated on the plan, or under section 4A of the Summary Offences Ordinance (Cap. 228) for obstruction of public places.

* for unlicensed restaurants, the FEHD may institute prosecutions as appropriate against the operators concerned under section 31 (1)(b) of the Food Business Regulation (Cap. 132X) for carrying on a food business without a licence or under section 4A of the Summary Offences Ordinance (Cap. 228).

* for licensees of restaurants prosecuted and convicted under section 34C of the Food Business Regulation, the FEHD may also suspend or cancel their licences for illegal extension of business area under the Demerit Points System (DPS) for licensed food premises.

The number of prosecutions taken against illegal extension of business area by restaurants and the number of licences suspended or cancelled under the DPS from 2010 to April 2013 are set out in Table 1 and Table 2 respectively.

My reply to the various parts of the question is as follows:

(a) FEHD keeps under constant review the effectiveness of the regulatory measures and enforcement actions taken against illegal extension of business area by restaurants. Recently, the FEHD has introduced the following targeted measures:

(i) strengthening prosecutions against illegal extension of business area by restaurants in accordance with section 34C of the Food Business Regulation, so that restaurant licensees convicted of the offence would be subject to the penalties under the DPS;

(ii) stepping up inspections and enforcement actions, and expediting the prosecution process;

(iii) providing the court with relevant information, such as conviction records of the restaurants concerned, the number of complaints received and the concerns of District Councils (DCs) for consideration in passing sentences;

(iv) for food premises situated at black spots where illegal extension of business area is rampant and with records of repeated prosecutions, FEHD will not issue a provisional licence if the licensee was prosecuted for occupying areas beyond the confines of their premises during the time during the application for a provisional licence;

(v) if the holder of a provisional licence is found in breach of the requirement to not occupy areas beyond the confines of their premises, FEHD will cancel the provisional licence if the irregularity is not rectified within a specified period;

(vi) when imposing penalties on food premises under the DPS, the FEHD will expedite suspension and cancellation of the licences; and

(vii) when the suspension or cancellation of a licence is pending appeal by a recalcitrant offender, the FEHD will consider not suspending the execution of such a decision so as to prevent the licensee concerned from abusing the appeal mechanism for a delay in the execution of penalties.

After implementation of the above strengthened measures to tackle illegal extension of business area by restaurants, the number of prosecutions instituted by the FEHD against licensed restaurants under section 34C of the Food Business Regulation increased from 639 in 2010 to 1 123 in 2012. 369 prosecutions were instituted in the first four months of this year. The number of restaurants which had their licences suspended or cancelled due to illegal extension of business area also increased from 99 in 2010 to 182 in 2012. There were 70 such cases in the first four months of this year. Complaints related to illegal extension of business area by restaurants dropped from 6 223 in 2011 to 4 955 in 2012, indicating that the regulatory efforts are paying off.

The Ombudsman released a direct investigation report in May on regulatory measures and enforcement actions against illegal extension of business area by restaurants. He recommended that the FEHD should consider taking measures to enhance the effectiveness of enforcement actions and the deterrent effect. The FEHD will proactively follow up on the recommendations made in the report by continuing to implement practicable measures, and carefully considering some of the new recommendations. It will also mobilise its existing resources to introduce the following new measures in phases at locations of serious non-compliance with a view to further combating such irregularities:

(i) in cases where a restaurant is prosecuted for illegal extension of business area after it has submitted a licence application, the FEHD will extend the observation period and only consider issuing the licence if no further offence of the same kind was committed in the period;

(ii) after a provisional licence is granted, the FEHD will immediately cancel a provisional licence without warning if premises are found to have breached the licensing requirement to not occupy areas beyond the confines of the premises;

(iii) in the situations mentioned in paragraphs (i) and (ii) above, the FEHD will take prosecution actions and consider applying for court orders under section 128B of the Public Health and Municipal Services Ordinance (Cap. 132) to close the premises if business continues on the premises without a licence.

To strengthen support for districts, the FEHD has also set up a task force on pilot basis with existing resources. Tsuen Wan has been selected as a pilot spot where the task force will take enhanced enforcement actions by increasing the number of prosecutions as appropriate and effecting arrest and seizure of paraphernalia subject to availability of resources.

The FEHD will continue to closely review the effectiveness of various measures and will roll out new ones as and when necessary to combat illegal extension of business area by

restaurants more effectively.

(b) The FEHD is empowered by the Public Health and Municipal Services Ordinance and its subsidiary legislation to regulate food premises. To enhance the deterrent effect and efficiency in law enforcement, the FEHD will actively follow up on the recommendations put forth by the Ombudsman and adopt more targeted measures to enhance enforcement effectiveness. If FEHD officers in discharging their enforcement duties detect any noise problem and other irregularities in connection with illegal extension of business areas by restaurants, the cases will be referred to the relevant departments for follow-up action.

(c) Licensees of restaurants in breach of the requirement under section 34C of the Food Business Regulation will be liable to a maximum fine of \$10,000 and imprisonment for three months with an additional daily fine of \$300 upon conviction. The FEHD will continue to provide the court with additional information such as conviction records, number of complaints received and the concerns of DCs for consideration in passing sentences, with a view to enhancing the deterrent effect and the effectiveness of enforcement actions for curbing illegal extension of business area by restaurants. Under the DPS, the prescribed demerit points for a particular offence will be doubled and trebled respectively if the same offence is committed for the second and the third time within a period of 12 months. The existing penalty level should be sufficient as an effective deterrent.

Ends/Wednesday, June 5, 2013

Issued at HKT 15:46

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Table 1

**Number of prosecutions instituted by the FEHD
against illegal extension of business area by restaurants from 2010 to
April 2013**

No. of prosecutions under the relevant provisions \ Year	2010	2011	2012	2013 (up to end-April)
Under section 34C of the Food Business Regulation (Cap. 132X)	639	871	1 123	369
Under section 31(1)(b) of the Food Business Regulation (Cap. 132X)	226	392	1 018	616
Under section 4A of the Summary Offences Ordinance (Cap. 228)	1 556	1 736	1 115	437

Table 2

**Number of licences suspended or cancelled by the FEHD
for illegal extension of business area by restaurants
under the Demerit Points System**

No. of licences suspended or cancelled	Year				
		2010	2011	2012	2013 (up to end-April)
Licences suspended		90	85	145	51
Licences cancelled		9	9	37	19
Total		99	94	182	70

Press Releases

LCQ20: Unlicensed restaurant operations and illegal extension of business area by restaurants

Following is a question by Dr Hon Helena Wong Pik-wan and a written reply by the Secretary for Food and Health, Dr Ko Wing-man, in the Legislative Council today (November 27):

Question:

Some District Council members have relayed to me that many restaurants (including quite a number of unlicensed restaurants) in Yuen Long Town and Tin Shui Wai extend their business area illegally at night. They occupy the walkways with more than a thousand dining tables, creating obstruction, noise and environmental hygiene problems, etc., as well as blocking the emergency accesses. As a result, the daily lives of the residents nearby are seriously disturbed. In addition, in its Direct Investigation Report published in May this year on illegal extension of business area by restaurants, the Office of The Ombudsman put forth to the Food and Environmental Hygiene Department (FEHD) and Lands Department 17 recommendations for improvement, including exercising more stringent control on the unlicensed restaurants concerned. In this connection, will the Government inform this Council:

- (a) whether the authorities have compiled statistics on the number of unlicensed restaurants; if they have, of the number of unlicensed restaurants in the past three years, and among them, the number of restaurants which had continued to operate without a licence despite their licences having been suspended after their accumulated demerit points had exceeded the limit under FEHD's Demerit Points System for restaurants; of the number of prosecutions instituted against the unlicensed restaurants by the authorities in the past three years;
- (b) whether the authorities will make public the list of unlicensed restaurants so that consumers can identify them; if they will, of the time to do so; if not, the reasons for that;
- (c) whether the Director of FEHD is authorised to order unlicensed restaurants to cease operation immediately; if so, of the details; if not, the relevant restrictions;
- (d) whether, in the past three years, there were cases of food poisoning of members of public allegedly caused by their dining in unlicensed restaurants; if so, of the details, and whether it knows if the punishment imposed by the court on unlicensed restaurants convicted for selling food unfit for human consumption is heavier than that imposed on licensed restaurants;
- (e) of the short-term and long-term measures put in place to address the problem caused by extension of business area to walkways by restaurants in Yuen Long Town and Tin Shui Wai; and
- (f) regarding the 17 recommendations for improvement put forth by The Ombudsman, of the recommendations which have been implemented, are planned to be implemented and will not be implemented respectively; of the implementation details of the recommendations which have been implemented, as well as the time

to implement the to-be-implemented ones?

Reply:

President,

The Food and Environmental Hygiene Department (FEHD) has been vigilant in combating unlicensed restaurant operations and the illegal extension of business area by restaurants. Stringent enforcement actions are taken by the FEHD against unlicensed restaurants, including those operating without a licence issued by the FEHD and those which carry on with their business after their licences have been cancelled. Apart from conducting regular inspections and enforcement actions against these premises, the FEHD would consider, where necessary, enhancing the frequency of instituting prosecutions, arresting the offenders and seizing the articles used, as well as applying for a closure order from the court to close the premises.

In recent years, the FEHD has adopted a multi-pronged approach and implemented targeted measures to strengthen its actions against illegal extension of business area by restaurants. The measures include stepping up inspections and enforcement actions, speeding up the prosecution process and providing additional information to the court for consideration when passing sentences. These measures are pursued to enhance deterrence and the effectiveness of enforcement actions taken to curb the irregularities.

My reply to the various parts of the question is as follows:

(a) The number of unlicensed restaurants, the number of restaurants which continued to operate after their licences had been suspended under the FEHD's Demerit Points System, and the number of prosecutions instituted against unlicensed restaurants by the FEHD in the past three years (between 2011 and the end of September 2013) are set out in Table 1.

(b) The FEHD keeps a list of licensed restaurants (including those with provisional and full licences) on its website and updates the information on a daily basis so as to provide the public with accurate information. Licensed restaurants are also required to display their licences and a sign indicating that the premises are licensed at a conspicuous place on the premises. With these measures in place, members of the public will be able to tell whether a food establishment is licensed. The Administration does not intend to prepare a separate list of unlicensed restaurants, as it may cause confusion including possible misunderstanding that all restaurants not on the list are licensed.

(c) Any person operating an unlicensed restaurant may be prosecuted by the FEHD under section 31(1)(b) of the Food Business Regulation (Cap. 132X). The FEHD may also apply to the court for a closure order under section 128B of the Public Health and Municipal Services Ordinance (Cap. 132) (the Ordinance) to close an unlicensed restaurant. In addition, if the Director of Food and Environmental Hygiene has sufficient reasons to believe that an unlicensed restaurant poses a serious threat to public health, he may order the immediate closure of the unlicensed restaurant under section 128C of the Ordinance. The closure will enable necessary investigations and cleansing, disinfestation, deratting, disinfection and other rectification measures to be taken immediately.

(d) In 2011, four unlicensed restaurants were involved in suspected food poisoning incidents. The corresponding numbers in 2012 and 2013 (up to September) were three and nine respectively. After investigation, the FEHD found that these 16 suspected food poisoning cases were mainly caused by bacteria. There is no material difference in the cause of poisoning between these cases and those involving licensed restaurants.

Under the Ordinance and the relevant subsidiary legislation, all food that is sold for human consumption must be fit for human consumption and meet the requirements relating to food safety standards. Section 54 of the Ordinance provides that any person selling food unfit for human consumption commits an offence and is liable on conviction to a maximum fine of \$50,000 and imprisonment for six months. The FEHD will submit to the court information about the background of the offender as well as the circumstances of the case, including the hygiene condition, licensing status and prosecution records of the premises selling the food in question. It is for the court to take such information into account as it deems fit when considering whether a heavier sentence should be imposed. The FEHD does not keep information on whether or not the court has as a result imposed heavier punishment on unlicensed restaurants.

(e) The FEHD is mindful that some restaurants in Yuen Long Town and Tin Shui Wai occupy public areas and operate beyond the designated areas of their licences. To combat illegal extension of business area by restaurants, the FEHD conducts regular as well as surprise inspections and institutes prosecution on the spot from time to time in various districts (including Yuen Long). In addition, the FEHD may suspend or cancel a licence for illegal extension of business area under the Demerit Points System or for breach of licensing conditions under the Warning Letter System, as appropriate. The number of prosecutions instituted against restaurants in Yuen Long District for illegal extension of business area and the number of licences suspended or cancelled in the past three years are set out in Table 2.

To enhance the effectiveness of enforcement actions and deterrence, the FEHD will, along the lines stated in item (f) below, implement the recommendations made by the Office of the Ombudsman in its direct investigation report, as measures to combat the problem of persistent illegal extension of business area by restaurants in various districts (including Yuen Long), with a view to enhancing compliance.

(f) Among the 17 recommendations put forth in the Ombudsman's direct investigation report, 14 are related to the FEHD. The FEHD has by and large implemented eight of the recommendations as follows:

(i) In May 2013, the FEHD set up, on a pilot basis, a task force comprising health inspectors to pursue enhanced enforcement action in a selected district, namely Tsuen Wan. The task force monitors the restaurants for irregularities throughout the peak business hours during weekdays and holidays, and takes stringent prosecution actions against persistent illegal extension of business area by restaurants. With the work of the task force in Tsuen Wan bearing fruit, the situation has improved significantly. The FEHD is considering setting up similar task forces in other districts fraught with illegal extension of business area by restaurants, with a view to taking forceful

actions against such irregularities.

(ii) Subject to the availability of resources, the FEHD will consider increasing the frequency of prosecuting recalcitrant restaurants, arresting the offenders and seizing the articles used as well as providing the court with conviction records so that the court may consider a heavier sentence.

(iii) The FEHD will apply for a closure order from the court against food premises which persistently operate without a licence. After a closure order is made by the court, the FEHD will close the premises in question and publicise, through the media, details of the unlicensed restaurant thus closed.

(iv) The FEHD has extended the observation period prior to the issue of a provisional licence. A licence will be issued only after the Department is satisfied that the food premises concerned have all along complied with the relevant requirements without being prosecuted for illegal encroachment of common passageway outside the premises.

(v) In respect of an applicant whose restaurant licence has previously been cancelled due to repeated illegal extension of business area, his/her application, or an application made by his/her representative/business partner, for any licence in relation to the same premises will not be processed within 12 months from the date of cancellation of the licence.

(vi) In 13 districts where the problem of illegal extension of business area by restaurants exists, the FEHD has consulted the district councils concerned on enhanced enforcement measures and proposals to designate spots for al fresco dining in suitable areas. Whilst all these district councils support the FEHD's enhanced enforcement measures, most of them have indicated that there are no suitable spots for al fresco dining in their districts.

A summary of the follow-up actions that are being pursued by the FEHD in respect of the remaining six recommendations is given below. The Department is:

(i) reviewing the effectiveness of the existing measures and, based on the situation of each district, would set objectives and formulate strategies for tackling illegal extension of business area by restaurants;

(ii) considering the case for applying the non-standard licensing requirement which prohibits encroachment on Government land or common passageways to all premises for which a restaurant licence is being sought, including putting restrictions on applications from recalcitrant offenders for restaurant or related licences in relation to other premises;

(iii) considering the case for legislative amendments to delay the mechanism for appeal against suspension or cancellation of licences from three to two tiers as well as the case for refraining from withholding the suspension or cancellation of licences pending the appeal results, except under very special circumstances; and

(iv) deliberating with the Home Affairs Department on how to balance stakeholders' interests when consulting the public on applications from restaurants for setting up outside seating accommodation.

The other three recommendations mentioned in the Ombudsman's direct investigation report are being followed up by the Lands Department (Lands D). They are namely Recommendation (15) (i.e. "Study with the Department of Justice how to more effectively exercise statutory powers to deal with illegal occupation of Government land by restaurants, in fulfilment of its responsibility as land administrator"); Recommendation (16) (i.e. "Subject to the outcome of their study, actively support the FEHD in taking rigorous actions against recalcitrant offenders"); and Recommendation (17) (i.e. "Subject to the outcome of the study, review with the Steering Committee on District Administration the arrangement whereby the Lands D only deals with illegal occupation of Government land involving structures of a "more permanent nature"). For the relevant Recommendations, the Lands D and the Department of Justice have agreed to set up a working group to review the existing procedures for land control action under the Land (Miscellaneous Provisions) Ordinance (Cap. 28) with a view to more effectively addressing the problem of prolonged or repeated unlawful occupation of Government land. Subject to the findings of the review, the Lands D will take follow-up actions as appropriate.

Ends/Wednesday, November 27, 2013
Issued at HKT 18:05

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**Number of unlicensed restaurants and prosecutions instituted by
the Food and Environmental Hygiene Department (FEHD)**

	2011	2012	2013 (up to September)
Monthly average number of unlicensed restaurants	208	248	265
No. of prosecutions against unlicensed restaurants	1 419	2 250	2 319
No. of restaurants which continued to operate after their licences had been suspended under the FEHD's Demerit Points System	1	3	1

**Number of prosecutions instituted by the FEHD
against restaurants in Yuen Long District for illegal extension of business area**

No. of prosecutions under the relevant provisions	Year		
	2011	2012	2013 (up to September)
Under section 34C of the Food Business Regulation(Cap. 132X) (illegal extension of business area)	114	126	79
Under section 31(1)(b)of the Food Business Regulation (Cap.132X) (unlicensed food business)	94	269	256
Under section 4A of the Summary Offences Ordinance (Cap. 228) (obstruction of public places)	185	221	227
Total	393	616	562

**Number of licences suspended or cancelled by the FEHD for illegal extension of
business area by restaurants in Yuen Long District**

Licences suspended/cancelled	Year		
	2011	2012	2013 (up to September)
Licences suspended	17	23	18
Licences cancelled	1	15	19
Total	18	38	37