

LegCo Panel on Environmental Affairs
Subcommittee on matters relating to environmental hygiene

Closure of Unlicensed Food Business Operations

PURPOSE

This paper seeks Members' views on our proposals to tackle the problem of unlicensed food business operations and food business operations which pose an imminent health hazard to the public.

BACKGROUND

2. To protect public health, all food businesses are required to operate with the appropriate licences such as licenses for general restaurants, light refreshment restaurants, food factories, siu mei and lo mei shops. Unlicensed food businesses are usually operated under unhygienic conditions in sub-standard premises and often pose a serious threat to public health.

3. Under the present Food Business Regulation of the Public Health and Municipal Services Ordinance (the Ordinance) (Cap. 132), it is an offence to carry on a food business without a licence and the maximum penalty for operating an unlicensed food business is a fine not exceeding \$50,000 and imprisonment for six months, and an additional fine of \$900 per day for committing a continuing offence. In addition, the Director of Food and Environmental Hygiene (DFEH) may apply to the court for a Prohibition Order under section 128 of the Ordinance. If the operator is found in breach of the Prohibition Order, DFEH may prosecute the operator for breach of the Prohibition Order and upon further conviction, may apply for a Closure Order. However, the whole process for closing unlicensed food premises is very long and may take as many as nine months. During this period, the unlicensed food business can continue to operate illegally although the operator is liable to the additional daily fine for committing a continuing offence. The present procedures for closing unlicensed food premises are complicated and lengthy. They are inadequate to deal with a public health issue which is of so much community concern.

4. Under Regulation 24 of the Prevention of the Spread of Infectious Diseases Regulation (Cap 141 Sub. Leg.), the Director of Health has the power to close food premises for the prevention of spread of any

infectious diseases e.g. cholera. However, this regulation cannot be used to deal with food incidents which do not involve infectious diseases, e.g. serious food poisoning, although such incidents pose an immediate health hazard and call for the immediate closure of the food premises involved.

5. The two former Provisional Municipal Councils endorsed a proposal to amend the Ordinance to empower the then Directors of the two Municipal Services Departments to close immediately any unlicensed food premises which are not fit to be licensed on grounds of structural, fire or public health reasons.

PROPOSALS

6. Our first priority is to tackle those unlicensed food premises so as to minimise the risk to public health and a speedy and effective mechanism to close such operations is essential. We propose a new procedure to enable DFEH to make a prompt application to the court for closing an unlicensed food premises under section 128 of the Ordinance without first applying for a Prohibition Order. The court may issue a Closure Order upon being satisfied on evidence that the food business is operated without a valid food business licence. If the unlicensed food business ceases or the provisions of the Ordinance have been complied with, the Closure Order could be lifted by the court as soon as possible upon application made by the owner or the occupier concerned.

7. To tackle food incidents which pose an immediate health hazard, we also propose that a new provision should be provided in the Ordinance to enable DFEH to close a food premise temporarily on ground of immediate health hazard other than to prevent the spread of infectious diseases. Such power will only be exercised on an absolute need basis for the protection of food safety and public health.

WAY FORWARD

8. We welcome Members' views on the preliminary proposals set out in paragraphs 6 and 7 above. We will refine and finalize our proposals in the next few months and consult the trade. We aim to introduce the legislative amendments in the next legislative session.

Environment and Food Bureau
Food and Environment Hygiene Department
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