

**Extract from the minutes of meeting of the
Panel on Food Safety and Environmental Hygiene
on 14 December 2004**

Members Present : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, JP (Deputy Chairman)
Hon Bernard CHAN, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long
Dr Hon KWOK Ka-ki

Public Officers Attending : Item IV

Mr Eddy CHAN
Deputy Secretary (Food & Environmental Hygiene)
Health, Welfare and Food Bureau

Mr Vincent LIU
Principal Assistant Secretary (Food & Environmental Hygiene)
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

Ms Annette LEE
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Clerk in Attendance : Mrs Constance LI
Chief Council Secretary (2)5

Staff in Attendance : Miss Betty MA
Senior Council Secretary (2)1

Ms Anna CHEUNG
Legislative Assistant (2)5

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IV Monitoring of food businesses operating under provisional licences and issuing of closure orders by the Director of Food and Environmental Hygiene

[LC Paper Nos. CB(2) 362/04-05(03) and (04)]

8. The Chairman said that the Legislative Council (LegCo) Secretariat had prepared a background brief on the subject matter.

9. Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) briefed members on the salient points of the Administration's paper.

Improvement measures for control over food business

Suspension of the issue of a provisional/full licence to food premises operated without licence

10. Mr WONG Kwok-hing said that the cluster of food poisoning incidents relating to meals consumed at a restaurant at Langham Place had caused much public concern about the operation of restaurants before being issued with a provisional licence. Mr WONG pointed out that under the existing legislation, any person who operated food business without a licence would be liable on summary conviction to a fine up to \$50,000 and imprisonment for six months, and an additional fine of \$900 for each day where the offence was a continuing offence. Mr WONG considered that penalty did not have much deterrence against unlicensed operation, as it took time to institute prosecution against the operator concerned, and some operators regarded the fine as part of their operating cost. He said that the recent food poisoning incidents had reflected that there was loophole in the existing licensing system, and asked whether the Administration planned to plug the loophole.

11. DFEH said that he was aware of the problem mentioned by Mr WONG Kwok-hing. DFEH further said that he was empowered to prosecute any person who operated food business without the requisite licences. In cases where the operator was convicted, the Administration was considering suspending the issue of a provisional or full licence to the food business concerned for a certain period of time. He was seeking legal advice from the Department of Justice (D of J) whether legislative amendments would be required.

12. Mr WONG Kwok-hing expressed support for DFEH's proposal. However, he expressed concern that pending the implementation of the new proposal, some food premises would continue to operate without the requisite

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licences. He asked when the Administration would be able to brief the Panel on the details of the proposal.

13. DFEH responded that the Administration planned to revert to the Panel in February 2005. DFEH said that under the existing legislation, he was empowered, under section 128C of the Public Health and Municipal Services Ordinance (Cap. 132), to make a closure order to close immediately premises that pose immediate health hazard to the public. Under section 128B of Cap. 132, DFEH could also apply to the court for a closure order to close premises for carrying out activities without the requisite licence or permit. However, the action taken under section 128B took time, and in some cases, the premises concerned would have already been issued the requisite licence or permit when DFEH's application for a closure order was heard by the court. DFEH added that as far as the food premises at Langham Place were concerned, three food premises had continued to conduct business without the requisite licences, and prosecution action had been instituted against all those premises which operated without a licence.

14. In response to the Chairman, DFEH said that the Administration's preliminary thinking was that the proposal of suspension of issue of licence would apply to all food premises which operated without the requisite licences, irrespective of whether an application for licence had been submitted.

15. Mr Tommy CHEUNG said that the proposal of suspending the issue of provisional /full licence to food premises which were found to have operated without licences was too harsh. Mr CHEUNG further said that while the industry agreed that operating food premises without licences should not be encouraged, the extent of the problem was not very serious and in many such cases, the food premises obtained the provisional licence within a matter of days. He considered that the food premises were unable to get a licence before operation largely due to the long time taken for processing the licence applications.

16. DFEH explained that the proposal should help achieve greater deterrence against operation of food businesses without the requisite licences, having regard to the limitations of the existing legislation. The Administration would provide more details of the proposal to the Panel in February 2005 after seeking legal advice.

17. Dr KWOK Ka-ki said that he was astonished to learn that a number of food premises in Langham Place continued to operate without licences even after the food poisoning incidents came to light. Dr KWOK considered that the Government had the responsibility to safeguard public health, and he supported measures to step up control over unlicensed or unhygienic food business, in order to uphold Hong Kong's reputation of Hong Kong as a food paradise and

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a tourist city. Dr KWOK said that he supported the proposal of suspending the issue of a provisional or full licence to food premises which had been convicted of operating without a licence.

18. Dr KWOK enquired about the number of occasions on which DFEH had invoked section 128C of Cap. 132 and whether there were problems in this connection.

19. DFEH said that the new sections concerning closure orders in Cap. 132 came into effect in 2003. He had ordered closure of restaurants on three and nine occasions respectively in 2003 and 2004 under section 128C of Cap. 132, on grounds that the food premises concerned posed immediate health hazard. Some of these premises could re-open within a short period of time after the health hazard had been removed. DFEH further said that when the first few cases of food poisoning relating to the restaurant in Langham Place came to light, his staff inspected the food premises concerned and asked the operator to take remedial measures. However, more food poisoning cases were reported in the subsequent days, and upon epidemiological evidence that the health hazard continued to exist, he ordered closure of the restaurant concerned under section 128C of Cap. 132. DFEH added that he could not issue a closure order to premises operating without licences, if they did not give rise to immediate health hazard. Instead, he could apply to the court for a closure order under section 128B, on the ground that the premises operated without a licence.

Hygiene Manager and Hygiene Supervisor Scheme

20. Mr Tommy CHEUNG expressed regret that the Administration would impose an additional licensing requirement and condition for both provisional and full licences upon application or renewal, by requiring the licensee to appoint a Hygiene Manager and/or Hygiene Supervisor. Mr CHEUNG pointed out that the food business did not support the Hygiene Manager and Hygiene Supervisor Scheme when it was proposed, because it would add to the cost of the trade. He considered it unreasonable for the Administration to launch the Scheme for the trade following the recent food poisoning incidents which were, in his view, isolated cases. He added that it would be more effective for the Health Inspectors to provide more advice and training to food operators on the proper food handling practices during inspections. Mr CHEUNG urged the Administration to reconsider its proposal.

21. DFEH said that when the Hygiene Manager and Hygiene Supervisor Scheme was first put forward for consultation, the food business trade had suggested that the Scheme should be taken forward only when sufficient training had been provided for the trade. DFEH informed members that up to November 2004, 5 960 Hygiene Managers and 27 800 Hygiene Supervisors had undergone the required training. DFEH further said that the recent food

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poisoning incidents were not given rise by unhygienic conditions of the food premises concerned, but improper food handling practices. The Administration considered that the appointment of a Hygiene Manager or a Hygiene Supervisor to strengthen food safety supervision at food premises was the long term solution to the problem.

22. Mr Tommy CHEUNG asked about the number of trained Hygiene Managers and Hygiene Supervisors remained in service in the food business trade, in view of the high staff turnover in the trade.

23. DFEH said that although the Administration did not have the information requested by Mr CHEUNG, it was estimated that the implementation of the Scheme would only require about 3 000 Hygiene Managers and 19 000 to 20 000 Hygiene Supervisors. The number of trained Hygiene Managers and Hygiene Supervisors would be able to meet the demand. Moreover, training courses for Hygiene Managers and Hygiene Supervisors were on-going.

Inspection of food premises with a provisional licence

24. Referring to paragraph 12 of the Administration's paper, Mr Vincent FANG asked about the criteria for classifying food premises as high-risk. DFEH responded that based on the experience of Food and Environmental Hygiene Department (FEHD), food premises selling raw and ready-to-eat food, and those food premises with records of food poisoning cases would be regarded as high-risk. It was explained in the paper that food premises operating under a provisional licence were classified as high-risk. To step up control over these premises, the first inspection to these premises would be advanced to within three to five working days upon the issue of a provisional licence.

Processing of licence applications

25. Mr TAM Yiu-chung said that some food business operators claimed that the time taken for processing licence applications was unduly long, and they had to commence operation before obtaining the requisite licences to avoid losses due to high rental of the premises. Mr TAM asked whether the departments responsible for approving the licence applications could speed up the process.

26. Mr Tommy CHEUNG said that although the licensing authority could inform an applicant for a provisional/full licence within 20 working days of the requirements for revisions to the layout plan, the departments concerned often took 20 to 30 days to study the revised layout plan submitted by the applicant.

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To his knowledge, the Buildings Department (BD) took over 30 days to process the certifications made by Authorized Persons.

27. DFEH explained that under the existing procedures, upon receipt of an application together with the layout plan, FEHD would refer the layout plan to BD and Fire Services Department (FSD) for comments. For complicated cases involving other matters, more departments would be involved. These departments would conduct site inspection to ascertain general compliance with the layout plan submitted by the applicant. The Application Vetting Panel would be held within 20 working days, and the applicant would be notified by the 20th working day whether the premises were licensable, or rectification works were necessary. DFEH said that the applicant could then make the necessary rectification works and engage an Authorized Person to certify compliance with the licensing requirements. A provisional licence would be issued upon receipt of the certification.

28. DFEH further said that a provisional licence could be issued within 24 hours when the applicant had submitted acceptable certificates of compliance to the satisfaction of the licensing authority. In other words, the shortest possible time for an applicant to be granted a provisional licence for restaurant was 21 working days. DFEH added that the time for issuing a provisional licence would depend on the time required by the applicant to meet the licensing requirements. In 2003, the average time for issuing a provisional licence for restaurant was 42 working days.

29. Mr WONG Yung-kan said that of the 35 premises operating at Langham Place, FEHD had instituted prosecution actions against 11 premises which had started business before obtaining a licence. Mr WONG asked whether the processing time for licence applications in respect of these 11 premises was unduly long.

30. DFEH said that of the 11 premises at Langham Place which started business before the issue of licence, the earliest application was submitted in mid-September 2004 while the latest one was made on 2 December 2004 (i.e. after prosecution was taken against the premises concerned). DFEH further said that it was difficult to estimate the time for issue of a provisional licence as it depended on the time required by the applicant to make the necessary rectifications for compliance with the licensing requirements.

31. Mr WONG Yung-kan said that to facilitate the applicants in meeting the licensing requirements, the licensing authority should provide clear guidelines to the applicants, as the contractors would need such details in carrying out the necessary works.

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32. DFEH responded that apart from the guidance notes on licensing procedures, there was a resource centre to provide advice and information to applicants and their contractors.

33. Mr Andrew CHENG said that food premises without licences should under no circumstances be allowed to operate. Mr CHENG considered that the crux of the problem was the unduly long processing time for licence applications, and that was why the Administration seldom applied to the court for an order to close those food premises operating without a licence. He further said that the issue of a provisional licence was a strange measure to deal with the problem of long processing time for applications of full licences. Mr CHENG asked the Administration to make reference to the licensing systems in other places, for example, Japan and Singapore took a shorter time for processing food business licence applications. Mr CHENG was of the view that if the licensing authority could streamline the licensing procedures and issue the licence within a shorter time, food premises would have no excuse in starting business before obtaining a licence. Any food premises found to have operated without a licence should be ordered closed immediately.

34. The Chairman asked whether it was possible to second staff from BD and FSD to the licensing office of FEHD, so that a real one-stop service could be provided to licensees by a dedicated licensing team at FEHD.

35. DFEH said that while the Administration would further explore ways to expedite the licence processing time, the time for issuing a provisional or full licence depended largely on the responsiveness of the applicant in complying with the licensing requirements. Moreover, streamlining of the procedures did not mean that the basic licensing requirements could be relaxed.

36. Dr Joseph LEE said that, to safeguard public health, the Administration should step up publicity to educate members of the public how to differentiate food premises which operated with or without a licence. In this connection, he asked about the progress of the open categorisation scheme for food premises.

37. DFEH said that operators were required to display the restaurant licence at a prominent location within the food premises. A list of licensed food premises by district was also available at FEHD's website. DFEH further said that the Administration was still considering the details of the open categorisation scheme and would revert to the Panel in 2005.

38. Mr Andrew CHENG said that Members had time and again expressed concern about the need to streamline the existing licensing framework for food business. Mr CHENG considered that to better safeguard public health, the Administration should seriously consider ways to speed up the processing of licence applications. Mr CHENG proposed that a subcommittee should be

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formed under the Panel to study the streamlining of licensing framework, and the Research and Library Services Division should be requested to conduct a research study on the licensing systems in overseas countries.

39. The Chairman informed members that the Research and Library Services Division of LegCo Secretariat had prepared a research study on Licensing of Food Premises in 1999. Members might wish to ask the Secretariat to update the research findings for consideration by the subcommittee. Members agreed. The Chairman said that the Clerk would issue a circular to invite members to join the subcommittee.

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40. The Chairman requested the Administration to revert to the Panel in February 2005 on the proposal of suspending the issue of provisional/full licence to food premises which were found to have operated without licences upon conviction.

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