

**For discussion  
on 13 June 2006**

**LegCo Panel on Food Safety and Environmental Hygiene**

**Changes to Food Business Licensing Procedures**

**PURPOSE**

This paper briefs Members about changes made recently to food business licensing procedures requiring applicants for new food business licence or transfer of food business licence to confirm that their premises under application are free of unauthorised building works (UBWs) and comply with Government lease conditions and the statutory plan<sup>1</sup> restrictions.

**BACKGROUND**

*UBWs*

2. Team Clean in its Report on Measures to Improve Environmental Hygiene in Hong Kong published in August 2003 noted that many food premises caused environmental nuisances to the surrounding area due to their UBWs including water cooling towers, large exhaust fans etc. erected outside the premises. Team Clean further noted that when there was no objection from Buildings Department (BD), the Food and Environmental Hygiene Department (FEHD) would issue a licence provided that the applicant had complied with all other licensing requirements, despite the existence of UBWs but would convey to the applicant BD's comment that the UBWs might be subject to future enforcement action. This practice allowed UBWs to proliferate.

3. To tackle the problem of UBWs at source, Team Clean proposed that FEHD should refuse to issue a licence to any applicant if it has come to FEHD's knowledge that there are UBWs attached to or extending from the premises under application. The applicant should be required to submit at the time of application floor plans of both the interior of the premises and all structures attached to or extending from the premises together with plans for the ventilating system. For existing licensed food premises with UBWs, Team

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<sup>1</sup> Statutory plan includes Outline Zoning Plan (OZP), Development Permission Area Plan and Urban Renewal Authority Plan.

Clean considered that the transfer of licence should not be allowed unless the UBWs have been removed. This would reduce the size of the problem over time by natural attrition.

*Government lease conditions and Outline Zoning Plan (OZP) restrictions*

4. The Ombudsman in an investigation report in August 2002 in relation to a complaint against FEHD for mishandling an application for a restaurant licence recommended FEHD to advise and require food business licence applicants to check whether their proposed food business would contravene any Government lease conditions or OZP restrictions on the premises concerned. The Ombudsman also recommended FEHD to require applicants to declare that they have conducted such checks and to indicate the results clearly. No licence should be issued unless it has been confirmed that no land use conditions or OZP restrictions would be violated.

**RECENT CHANGES TO LICENSING PROCEDURES**

5. In the light of the recommendations of Team Clean and The Ombudsman, FEHD has since mid-April 2006 implemented new licensing procedures to ensure the licensed food premises are free of UBWs and in compliance with Government lease conditions and statutory plan restrictions. However, to minimise the impact on the trade, FEHD has applied the new procedures to applications for new licence or transfer of licence only. In other words, the new procedures do not affect existing licences and their renewals. We consider this pragmatic approach has struck a balance between the interest of the trade and reducing the size of such problems over time.

6. Details of the new arrangement are set out as follows -

*UBWs*

The following procedures apply to six types of licences, namely, restaurant, factory canteen, cold store, food factory, fresh provision shop and bakery. Subject to the availability of resources, the new arrangement will be extended to cover other types of licensed premises, i.e. siu mei and lo mei shops, frozen confection factories and milk factories at a later stage.

- (a) As a general principle, FEHD will not approve any new application for licence or transfer of licence if UBWs are found at the premises under application;

- (b) To facilitate identification of UBWs, applicants will be required to submit layout and ventilation plans setting out clearly both the interior of the premises and all the structures attached to or extending from the premises;
- (c) If UBWs are shown on the proposed layout and ventilation plans submitted or detected during site inspections, the applicant will need either to remove the UBWs or obtain BD's approval of the proposed building works after removal of UBWs;
- (d) A licence will only be issued if an applicant can obtain certification from a recognised professional (i.e. an authorised person or a registered structural engineer registered under the Buildings Ordinance (Cap. 123)) that the premises under application are free from UBWs;
- (e) Guidelines have been issued to assist applicants and recognised professionals in preparing the necessary certification that the food business premises are free of UBWs; and
- (f) A licence so issued may be cancelled if UBWs are subsequently detected.

#### *Government lease conditions*

At the time of submitting an application for new food business licence (all types) or transfer of food business licence (all types) at private premises, the applicant is required to submit a self-declaration to FEHD declaring that the operation of the food business at the premises under application is in compliance with Government lease conditions.<sup>2</sup> FEHD may cancel the licence when the self-declaration is later found to be fraudulent or false.

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<sup>2</sup> For an application at Housing Authority's properties, the properties divested to The Link Management Limited (the Link) or Government properties, FEHD will seek comments from the Housing Department, the Link or department concerned on whether the proposed food business is in compliance with the designated trade under the tenancy agreement.

### *Statutory plan restrictions*

FEHD will refer an application for new issue or transfer of all types of food business licence to the Planning Department (Plan D) to confirm compliance with statutory plan restrictions. The application will not be processed when Plan D advises that there are violations.

## **CONSULTATION AND THE ADMINISTRATION'S CONSIDERATIONS**

### *UBWs*

7. The Advisory Council on Food and Environmental Hygiene and the Legislative Council Panel on Food Safety and Environmental Hygiene were consulted in October 2003 and December 2003 respectively on the proposal to tackle the problem of UBWs. The former showed support whereas the majority of the Panel Members supported the proposal in principle. Since then, FEHD has worked closely with the departments concerned and involved the relevant institutes of professionals in formulating the guidelines and the procedures.

8. Over this period, the trade was also consulted and the concerns expressed included cost to the trade, complication of the licensing process and risk to the transferee. We have taken into account the trade's practical concerns in the changes made to the licensing procedures. We have applied the new procedures to applications for new licence and transfer of existing licence only. In other words, existing premises are not affected on renewal and that UBWs of such premises are required to be removed only upon transfer. To streamline the licensing process, FEHD accepts professional certification that the premises are free from UBWs. For transfer of food licences, we require a transferee to obtain a recognised professional's certification that the premises are free from UBWs. It is clearly stated in the application form for licence transfer that a transfer will be denied if UBWs are found at the premises concerned.

### *Government Lease Conditions and Statutory Plan Restrictions*

9. Since 2000, applicants for restaurant licence have been reminded in 'A Guide to Application for Restaurant Licences' published by FEHD that they should choose premises which are suitable for operating restaurant business under the occupation permit and the Government lease. Since 2002, FEHD has distributed an additional explanatory note to remind applicants that the grant

of a licence does not exempt the licensee from meeting any requirements imposed under the legislation administered by various Government departments and Authorities, including the Director of Lands and the Director of Planning. Furthermore, the application form for new licences has in particular stated that it is the responsibility of the applicant to ensure that operating food business at the shop premises under application for a food business licence is in compliance with the requirements imposed under the legislation administered by FEHD and other Government departments as well as relevant Authorities, including the Government lease and the relevant statutory plan. It has also stated that the applicant should consult his professional adviser(s) if necessary on the technical interpretation of the Government lease or the statutory plan. The applicant is required to sign against these statements to indicate his understanding and acceptance of these requirements.

10. In order to implement The Ombudsman's recommendations stated in paragraph 4 above and at the same time to streamline the licensing procedures, we have since mid-April 2006 introduced a self-declaration form to be completed by the applicant to confirm compliance with Government lease conditions. We have also made arrangement with the Plan D to confirm compliance with statutory plan restrictions before the meeting of Application Vetting Panel (AVP)<sup>3</sup> to ensure this additional procedure will not lengthen the licence application process. The trade was involved in discussion of The Ombudsman's recommendations in 2002 and 2004 and more specifically consulted on the new procedures in November 2005. They raised no particular comments.

## **ADVICE SOUGHT**

11. Members are invited to take note of the recently introduced changes to the food business licensing procedures.

**Health, Welfare and Food Bureau**  
**Food and Environmental Hygiene Department**  
**June 2006**

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<sup>3</sup> For non-AVP cases, PlanD will provide comments within 24 working days.