



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

Your Reference : CB2/PL/FE

Our Reference :

Clerk to the Panel
Panel on Food Safety and Environmental Hygiene
Legislative Council
(Attn : Mr. Jove CHAN)

20 May 2011

Dear Mr. CHAN,

**Panel on Food Safety and Environmental Hygiene
Referral from Legislative Council Members' meeting
with the Eastern District Council members on 9 December 2010**

Thank you for your letter of 11 May 2011, conveying the issues discussed at the captioned meeting on illegal occupation of public place for business extension by shops and the exposure of food for sale by food premises. The Eastern District Council members wished that the Administration would increase the power of the Food and Environmental Hygiene Department ("FEHD") and the Hong Kong Police Force, etc. in taking prosecution actions against the persons who commit the above offences and make necessary amendments to the relevant legislation and increase the penalty level to enhance the deterrent effect. Our reply is as follows -

1. Illegal occupation of public places

Illegal occupation of public places for business extension by

shops is a street management problem involving the work areas of various government departments (including the Highways Department, the Lands Department, the Police, the Home Affairs Department (“HAD”) and the Food and the FEHD etc.). As maintenance of street cleanliness is one of the main tasks of the FEHD, the Department will act in accordance with the existing enforcement mechanism to handle cases involving illegal hawking activities and obstruction to cleansing operation and where resources permit, take part actively in the joint departmental operations coordinated by the HAD in tackling the problem. If they pose imminent danger to the public or seriously affect other road users, enforcement actions will be taken by the Police.

If shop operators illegally extend their businesses in public places, the FEHD may prosecute them for illegal hawking under section 83B(1) of the *Public Health and Municipal Services Ordinance*, Cap. 132. The maximum penalty for the first conviction is a fine of \$5,000 and imprisonment for one month. For the second and subsequent convictions, the maximum penalty is a fine of \$10,000 and imprisonment for six months. If such illegal activities also cause obstruction to cleansing operation, the FEHD may prosecute the offenders under section 22(1) of the aforesaid Ordinance. Upon conviction, the maximum penalty is a fine of \$5,000. In addition, the FEHD will conduct joint operations with relevant departments (including the Police) to take enforcement actions against shop operators causing obstruction to public places by placing commodities or articles thereat under section 4A of the *Summary Offences Ordinance*, Cap. 228. Upon conviction, the maximum penalty is a fine of \$5,000 or imprisonment for three months.

2. Exposure of food for sale by food premises

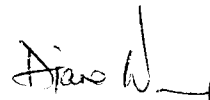
Under section 11 of the *Food Business Regulation* (Cap. 132 X), no person in the course of any food business shall store (including display for sale) any open food except in a suitable container to prevent the access of dust, insects and vermin. Offenders are liable to prosecution and upon conviction subject to a maximum fine of \$10,000 and imprisonment for three months. Furthermore, in accordance with the Demerit Points System for licensed food premises administered by the FEHD, prescribed demerit points will be registered against the food premises upon conviction of offences in relation to food safety and environmental hygiene (such as section 11 of the Regulation). Accumulation of demerit points up to a certain level will lead to suspension or cancellation of the licence.

3. Summing Up

At present, there are adequate legislative provisions to empower the FEHD to tackle the problems concerning exposure of food for sale by food premises and illegal occupation of public place for business extension by shops. When cases concerning shops which repeatedly occupy public places for business extension are brought before the magistrates, the FEHD will draw the attention of the court of the public concern over the problem of obstruction caused by these shops and provide the court with detailed information of the cases so as to facilitate the court to impose appropriate penalty upon conviction.

The FEHD will continue to monitor the situation closely and take appropriate enforcement actions when necessary to ensure food and environmental hygiene. If you have further enquiries, please feel free to contact the District Environmental Hygiene Superintendent (Eastern) of the FEHD on 3103 7000.

Yours sincerely,



(Miss Diane Wong)
for Secretary for Food and Health

c.c. AD(Ops)1, Food and Environmental Hygiene Department
Secretary for Security