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ENVIRONMENT AND ECOLOGY BUREAU
(FOOD BRANCH)
GOVERNMENT SECRETARIAT

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5 January 2024

Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road Central, Hong Kong
(Attn: Ms. Shirley Chan)

Dear Ms. Chan,

Public Accounts Committee
Consideration of Chapter 6 of the Director of Audit's Report No. 81

Regulatory control of food premises

Thank you for your letter dated 20 December 2023 to the Secretary for Environment and Ecology regarding Chapter 6 of the Director of Audit's Report No. 81 – Regulatory control of food premises. The consolidated reply of the Environment and Ecology Bureau and the Food and Environmental Hygiene Department is enclosed at **Annex**.

Your sincerely,

A handwritten signature in black ink, appearing to be "Wendy AU".

(Ms. Wendy AU)

for Secretary for Environment and Ecology

c.c. Director of Food and Environmental Hygiene

**Ch 6 of the Director of Audit’s Report No. 81
“Regulatory control of food premises”**

Part 3: Regulatory control of unlicensed food premises

- (1) **With reference to paragraph 3.2 of the Director of Audit’s Report No. 81 (the Audit Report), the current legislation stipulates no person shall carry on a food business without a licence/permit granted by the Food and Environmental Hygiene Department (FEHD); however, as illustrated in Table 7 of paragraph 3.3, among the unlicensed food premises found by the FEHD, the number of those “in operation” rose from 203 in 2018 to 281 in 2023. Please advise on:**
- (a) **the number of enforcement actions, aside from weekly visits, taken by the FEHD against the unlicensed food premises in operation abovementioned, as well as the number of prosecutions instituted, the number of successful prosecution cases and the percentage of unlicensed food premises eradicated;**

The enforcement figures of the Food and Environmental Hygiene Department (FEHD) against unlicensed food premises from 2018 to 2023 (as at November) are as follows –

	2018	2019	2020	2021	2022	2023 (as at 30 th November)
Number of inspections*	22 895	28 296	28 035	44 758	49 790	50 235
Number of prosecutions	3 217	4 171	3 161	4 700	3 880	3 448
Number of convictions	3 157	4 035	3 139	4 575	3 685	1 982

Note*: Including the number of inspections and enforcement operations.

Unlicensed food premises may cease operations after being prosecuted, continue to violate the regulations and be prosecuted again, or obtain a licence and operate legally, but the FEHD does not have the relevant breakdown.

(b) any new measures in place to tackle the increase in the number of unlicensed food premises; and

As shown in the reply to Question (1)(a), the FEHD has stepped up inspections to unlicensed food premises in recent years. The frequency of inspections of individual premises depends on the hazards to environmental hygiene and public health arising from their operation (e.g. whether there were food poisoning, foodborne diseases or food incidents involved), whether the operator has submitted an application for a food business licence, whether the premises in respect of the application can satisfy the essential licensing requirements (for example, whether the premises is a stable structure and whether there is safe drinking water supply and proper sewage system etc.), or whether there was any outright objection raised by relevant government departments so that the application could not be further processed etc. Regardless of whether the premises is under application for a licence, if the FEHD collects sufficient evidence during inspections, the department would definitely take prosecution action against the offenders in accordance with the Food Business Regulation. If convicted, the maximum penalty for contravention of the regulation concerned is a fine at level 5 and imprisonment for six months, and a daily fine of \$900. When the court hears a case involving repeated operation of an unlicensed food business, the FEHD will present relevant conviction records of the offender to the court, to support the court in meting out an appropriate sentence.

The FEHD understands the concerns of the PAC and is in fact actively exploring different possible options to enhance the deterrent effect against the carrying on of unlicensed food business before the issue of provisional licence. One possible option is to reject the licence application and debar the same applicant from applying for the same type of licence for the same premises for a certain period of time.

(c) the new measures in place to help the public identify and avoid unlicensed food premises in order to reduce health risk.

All licensed food premises shall exhibit the food business licence and the orange sign indicating the valid period of the licence at a conspicuous place near the entrance of the food premises to facilitate members of the public for identification. To facilitate the public in checking if the premises are issued with a food business licence/permit, FEHD's website contains a list and search engine for premises issued with food business licences/permits for public

inspection. In addition, the FEHD also plans to set up a dedicated webpage to strengthen promotion to the public on how to identify licensed food premises and encourage the public to report to the FEHD on discovery of any suspected unlicensed food premises. We have reached consensus with the relevant departments (including FSD and BD) that once operation of unlicensed food premises is detected, the case would be referred to others for necessary action.

(2) It is mentioned in paragraph 3.5 of the Audit Report that 9 food premises had been operating for at least one year without being included in the “lists of unlicensed food premises identified with active operation” or other records maintained by the FEHD. Please advise on:

(a) whether the FEHD was unaware of the persistent illegal operation of those 9 unlicensed food premises until their omission was found by the Audit Commission;

Before the investigation of the Audit Commission, the relevant district offices of the Department had no records of the 9 food premises suspected of operating without licence.

(b) the reason(s) why the FEHD failed to identify those 9 food premises checked by the Audit Commission and allowed their long-term persistent operation, although 49 790 inspections were conducted to unlicensed food premises in 2022, as mentioned in paragraph 1.14 of the Audit Report;

The said figure on inspection refers to the inspection figures against unlicensed food premises under application for licence, complaints or those with previous prosecution records. As the FEHD had not received any licence application nor complaint for the premises mentioned in Question (2)(a), the said inspections did not cover these 9 premises. In addition, these 9 premises were located in remote countryside or outlying islands (7 located in Tung Lung Chau, 1 located in Sha Tau Kok and 1 located in Sheung Shui Wai), officers of the district offices do not perform duties in the vicinity frequently and hence were unable to detect the presence of unlicensed food premises at these locations.

- (c) the follow-up action taken by the FEHD against those 9 unlicensed food premises to date;**

The FEHD had deployed staff to conduct inspections at the locations concerned on different days and at various hours, during which no evidence of operation of unlicensed food business at the premises was found. The FEHD will continue to keep monitoring on the situation and take appropriate action.

- (d) whether the FEHD has examined if there is any loophole in the existing identification mechanism; if yes, the results; and**

For premises without submission of application for licence, staff of the Department would discover the operation of suspected unlicensed food premises through complaint investigations or routine district works. Therefore, we may not be able to detect those in remote areas or with no complaint received from the public. Our staff will review the current mechanism after taking the resource and risk factors into consideration.

- (e) whether the FEHD has reviewed, identified and updated the “lists of unlicensed food premises identified with active operation” of various districts so far; if yes, the details, whether there has been any apparent increase and the follow-up action taken by the FEHD; if no, the reason(s).**

The district offices of the FEHD review the status of unlicensed food premises in their respective districts from time to time, and make monthly reports on the status and number of unlicensed food premises. Figures set out in Table 7 in the Audit Report (as at November) are updated as follows:

Number of unlicensed food premises		As at 31 December					As at 30 June	As at 30 November
		2018	2019	2020	2021	2022	2023	2023
Under application for licences	In operation (Note 1)	177 (36%)	238 (41%)	228 (31%)	428 (27%)	271 (20%)	274 (23%)	203 (20%)
	Not in operation (Note 2)	220 (44%)	257 (44%)	422 (56%)	1 111 (70%)	1 021 (77%)	868 (74%)	783 (78%)
Not under application for licences	In operation (Note 1)	26 (5%)	15 (2%)	15 (2%)	10 (1%)	8 (1%)	7 (1%)	4 (0.4%)
	Not in operation (Note 2)	75 (15%)	74 (13%)	82 (11%)	40 (2%)	20 (2%)	29 (2%)	15 (1%)
Subtotal	In operation (Note 1)	203 (41%)	253 (43%)	243 (33%)	438 (28%)	279 (21%)	281 (24%)	207 (21%)
	Not in operation (Note 2)	295 (59%)	331 (57%)	504 (67%)	1 151 (72%)	1 041 (79%)	897 (76%)	798 (79%)
Total		498 (100%)	584 (100%)	747 (100%)	1 589 (100%)	1 320 (100%)	1 178 (100%)	1 005 (100%)

Note 1: Unlicensed food premises in operation were those found in operation during inspections of the FEHD in that calendar month.

Note 2: Unlicensed food premises not in operation were those found not in operation during inspections of the FEHD in that calendar month.

According to the figures in November 2023, the number of unlicensed food premises “in operation” is about the same as that in December 2018, but lower than that from 2019 to 2022. The percentage of unlicensed food premises “in operation” had dropped from 41% in 2018 to 21% in November 2023, indicating that the regulatory measures against unlicensed premises of the Department is effective. The FEHD will continue to carry out the relevant works.

Part 4: Other related issues

- (3) **According to paragraph 4.9 of the Audit Report, the current Food Business Regulation (Cap. 132X) (the Regulation) prohibits any dog from entering food premises, except for a dog serving as a guide for a blind person or in connection with the exercise of a lawful power, would the Environment and Ecology Bureau (EEB) please advise on:**

(a) the reason(s) and justification(s) for prohibiting dogs from entering food premises but permitting the entry of specific dogs under the Regulation, which was introduced in 1994;

Since 1994, the Food Business Regulation (Cap. 132X) has stipulated that no person shall bring any dog onto any food premises and no person engaged in any food business shall knowingly suffer or permit the presence of any dog on any food premises, except for dogs serving as guide dogs for the blind or performing statutory duties.

Physical co-presence of humans and animals increases the risk of transmission of communicable diseases, and domesticated dogs are used to making close contacts with humans. Permitting dogs to enter food premises will pose higher health risk to patrons within, especially those physically weak or susceptible (e.g. elderly, children, pregnant women and the chronically ill). The Regulation thus laid down restrictions on dogs entering food premises.

(b) Whether it has been assessed if such a restriction involves discrimination or differential treatment, and if this is contrary to and inconsistent with the pet-friendly policy that the Government has been promoting in recent years;

The Government has been proactively making efforts in creating a barrier-free living environment for persons with disabilities. The Disability Discrimination Ordinance (Cap. 487) has provided that refusing to allow a person with visual impairment accompanied by a guide dog to enter any premises that the public is allowed to enter, or refusing to provide that person with services or facilities may be construed as a contravention of the Disability Discrimination Ordinance. Section 10B of the Food Business Regulation stipulates that entry of dog serving as a guide for a totally or partially blind person onto a food premises (except a food room) is allowed.

As food premises in Hong Kong are generally cramped, aside from the angle of public health and pet-friendliness, the reaction of pet dogs (such as whether their behaviors can be kept under total control) in a crowded and cramped environment (possibly with different types of dogs/animals), as well as the potential impact on other diners would also need to be taken into account.

- (c) whether the EEB has reviewed if the law, which has come into force for almost 20 years, is outdated; if yes, what is/are the reason(s) for not making any amendments; and**
- (d) whether the EEB will review and amend the law as soon as possible to address social needs, given that the community's hygiene awareness has increased significantly since the introduction of the law.**

The FEHD has from time to time received complaints about certain food premises allowing customers to bring pet dogs inside. On the other hand, in recent years, there are also views in the society hoping to bring along pet dogs to dine in food premises.

The existing regulatory requirement prohibiting dogs from entering food premises have been in place for close to 30 years. The Government understands that there has been changes in the societal culture but would also have to strike a balance on the need to safeguard public health and hygiene, etc. The EEB, together with FEHD, is reviewing the current situation as well as the existing policy and legislation with reference to the experiences in other places and the views of the public. We agree with the relevant recommendation of the Audit Commission (see paragraph 4.13(e) of the report).

- (4) With reference to entrance of pets to food premises mentioned in paragraph 4.10 of the Audit Report, please advise on:**
 - (a) the channels through which the FEHD collects data for compiling the list of pet-friendly restaurants, and the frequency adopted for updating the list;**

In early 2023, the FEHD compiled a list of restaurants from the Internet for regulatory and internal review purposes and FEHD has not further updated the relevant records yet .

It is worth noting that the Food Business Regulation does not prohibit all pets from entering food premises. For example, birds and cats are allowed to enter the seating area of restaurants. Therefore, restaurants which allow customers to do so are not breaching the law.

- (b) whether the FEHD has kept statistics on the number of pet-friendly restaurants in the territory; if yes, a breakdown of the number by District Council district; and whether there is an apparent upward trend in the past 3 years; and**

The FEHD does not update the relevant records on a regular basis. According to the list of restaurants (compiled in early 2023) mentioned in paragraph 4.10 of the Audit Report, the distribution of restaurants by District Council district is as follows:

District	Number	District	Number
Central & Western	50	Islands	12
Eastern	10	Kwai Tsing	1
Southern	10	North	2
Wan Chai	21	Sai Kung	12
Kowloon City	10	Sha Tin	5
Kwun Tong	5	Tai Po	2
Sham Shui Po	5	Tsuen Wan	13
Yau Tsim Mong	25	Tuen Mun	4
Wong Tai Sin	0	Yuen Long	12

- (c) according to the data of the Census and Statistics Department, the number of dogs kept by Hong Kong households in 2018 amounted to more than 200 000. After 3 years of epidemic, this number has probably grown, so has the demand for pet-friendly restaurants from pet-keepers who opt for such restaurants out of travel convenience. Please advise whether the EEB will consider follow the Mainland’s practices of controlling pet-friendly restaurants by licensing so as to meet the daily needs of the public, and support the “night economy” initiatives strongly promoted by the Chief Executive by encouraging local pet-keeping households to stay and spend in Hong Kong, thereby revitalising the local economy.**

As mentioned above, the EEB and the FEHD are reviewing the current situation as well as the existing policy and legislation with reference to the experiences in other places and the views of the public.