

立法會
Legislative Council

LC Paper No. CB(2) 270/05-06(04)

Ref: CB2/PL/FE

**Meeting of Panel on Food Safety and Environmental Hygiene
on 8 November 2005**

Background Paper prepared by Legislative Council Secretariat

Regulatory control of “Private Kitchens”

Purpose

This paper summarizes the discussions of the Panel on Food Safety and Environmental Hygiene on the issue of “private kitchens” since 2002.

Background

2. Under the current regulatory framework for food business, a person must obtain a licence to operate restaurant business. In recent years, “private kitchens”, which serve special cuisines and operate on a small scale in commercial or residential buildings, have become increasingly popular and also an attraction for tourists. As many of these food premises do not have a food business licence, they are not regulated under the Food Business Regulation (Cap. 132 sub. leg. X).

3. In 2002, Hon Tommy CHEUNG raised the issue for discussion at the Panel on Food Safety and Environmental Hygiene.

Discussion by the Panel on Food Safety and Environmental Hygiene

The Administration’s proposal in 2002

4. At the meeting held on 15 July 2002, the Panel discussed whether “private kitchens” should be brought under regulatory control. Hon Tommy CHEUNG expressed concern that as the majority of “private kitchens” were unlicensed, it posed a certain degree of risk to customers as these premises might not meet the necessary hygiene, building and fire safety requirements for operating food businesses. According to the Administration, the majority of

these premises were unlicensed because of restrictions on tenancy, physical constraints of the buildings concerned, and unwillingness on the part of the operator to invest in the necessary facilities.

5. Some Panel members were of the view that to protect public health and to maintain a level-playing field for food businesses, these “private kitchens” should be brought under regulatory control. Some other members, however, considered that a flexible approach should be adopted for “private kitchens”, as they operated only on a small scale and contributed to promoting Hong Kong as a gourmet paradise.

6. The Administration subsequently provided a paper on the proposed regulatory framework for the operation of “private kitchens” for discussion by the Panel on 20 November 2002. To cater for the interests of different sectors of the community, the Administration considered that “private kitchens” should be allowed to operate as a restricted practice subject to their meeting the essential hygiene, building and fire safety requirements. The full licensing requirements for food business would not apply to these establishments.

7. Under the Administration’s proposal in 2002, “private kitchens” referred to those operating in the residential buildings or in the residential portion of a composite commercial/residential building. To balance the interests of the neighbours and patrons of these food establishments, the Administration proposed that these “private kitchens” should operate for only three hours a day, and the seating capacity should be restricted to 12 to 18 at any one time. No take-away business would be allowed on these establishments to prevent them from operating as food factories. The operator must also obtain the approval or consent of the Lands Department, and the building management concerned for operating “private kitchen” on the premises.

8. Panel members had divergent views on the Administration’s proposal. Hon Tommy CHEUNG and Dr Hon LO Wing-lok opposed to the proposal. They did not agree that “private kitchens” should be allowed to operate in residential buildings and be exempted from the normal licensing requirements for food businesses. They considered such a proposal unfair to both the catering industry and the property owners of the buildings concerned. Given the high vacancy rate in commercial buildings at that time, they were of the view that the Administration should encourage food business to operate in commercial buildings and comply with the food business requirements. Hon Tommy CHEUNG also expressed much concern that it would be difficult for the Food and Environmental Hygiene Department to enforce the requirements such as operating hours and prohibition of take-away business. It was also unfair if the proposed regulatory framework was to be subsidised by licence fees collected from other food businesses.

9. Some other members, however, expressed concern that the proposed requirements, such as operating hour and seating capacity, were too stringent. They considered that these establishments created employment opportunities and they were conducive to the development of the local economy. They requested the Administration to relax the requirements on operating hours and seating capacity, to facilitate the “private kitchens” to continue operation.

10. The Panel requested the Administration to revise its proposal and revert to the Panel.

Views of the catering industry and operators of “private kitchens”

11. At its meeting on 25 February 2003, the Panel listened to the views of the catering industry and operators of “private kitchens” about the proposed regulation of “private kitchens”.

12. While representatives of the restaurant trade did not oppose the existence of “private kitchens”, they considered the regulatory framework proposed by the Administration in December 2002 divisive and unfair. They objected to the proposal that “private kitchens” would be exempted from the normal licensing requirements. They considered it illogical and unfair that “private kitchens” would be allowed to operate in the residential portion of composite commercial/residential buildings without having to comply with the licensing requirements, while those restaurants operating in the commercial portion of the same building were required to comply with all licensing requirements and pay the full licence fees. They urged that there should be a level-playing field for all food businesses. It was also necessary for the Government to ensure that the “private kitchens” complied with the hygiene and safety standards to ensure the safety of patrons.

13. Representatives of the operators of “private kitchens” told the Panel that they also attached great importance to food hygiene, and considered it reasonable for “private kitchens” to be subject to regulatory control. They also agreed that there should be a level-playing field for food businesses. However, they were concerned that the existing licensing requirements were rigid and were not conducive to the operation of small-scale food businesses. They called upon the Government to review the licensing regime and provide greater flexibility to facilitate the operation of different types of food businesses. They also requested relaxation of the proposed requirements for operating hours and seating capacity of “private kitchens”.

The revised proposal in December 2003

14. After the discussion in February 2003, the Administration provided a revised framework for discussion at the Panel meeting on 18 December 2003.

15. In view of the restaurant trade's objection to exempting "private kitchens" from food business licensing, the Administration recommended to place all "private kitchens" within a licensing regime under section 31 of the Food Business Regulation (Cap 132 sub. leg.), which applies to other food business operations, in order to maintain a level-playing field across the board.

16. To address the other concerns expressed by Panel members, the restaurant trade and operators of "private kitchens", the Administration proposed the following revisions to the licensing requirements for "private kitchens"-

- (a) "private kitchens" would not be allowed to operate in pure residential premises. Instead, they should be housed in commercial buildings or composite commercial/residential buildings;
- (b) the maximum seating capacity would be relaxed to 24 persons at any one time;
- (c) the operation of "private kitchens" should be restricted to the provision of dinner, and the business hours should be no more than 3.5 hours each day; and
- (d) given the confined scale of operation of private kitchens, smaller food rooms and fewer sanitary fitments and ablution facilities than traditional restaurants would be required; and
- (e) operators should comply with building and fire safety requirements imposed by the relevant authorities, which were applicable to other food business licensees.

17. While Panel members generally supported the revised proposal and the early introduction of the legislative amendments, some members requested the Administration to provide further information on the differences in licensing requirements for restaurants, clubhouses and "private kitchens". The Panel also noted that for those food establishments currently operating in pure residential buildings, they would have to move to other suitable premises under the revised proposal.

Recent developments

18. In September 2005, the Administration provided additional information to the Panel on the introduction of a new category of food business to cover the operation of "private kitchens". In the paper, the Administration provided a comparison of the licensing control of general restaurants, clubs and "private kitchens", and also the current requirements for operating "private kitchens" in small houses in the New Territories.

19. The Administration plans to introduce amendments to the Food Business Regulation to place “private kitchens” under licensing control under section 31 of the Regulation. The Administration also proposes to use a more specific term of “restricted dining place” to replace the common term of “private kitchens” to avoid any possible confusion.

Relevant papers

20. A list of relevant papers and documents is in the **Appendix** for members’ easy reference. The papers and documents are available on the Council’s website at <http://www.legco.gov.hk/english/index.htm>.

Council Business Division 2
Legislative Council Secretariat
2 November 2005

Relevant Papers/Documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Passed/Council Question</u>
Legislative Council	19 March 2003	Written question on prosecutions of unlicensed food establishments in residential buildings (commonly known as “private kitchens”) raised by Hon Tommy CHEUNG
	10 December 2003	Oral question on information publicized on “ESD Life” website about “private kitchens” raised by Hon Tommy CHEUNG
	17 November 2004	Oral question on “Upper floor unlicensed cafe” raised by Hon Tommy CHEUNG
Panel on Food Safety and Environmental Hygiene	15 July 2002	Paper provided by the Administration – LC Paper No. CB(2) 2532/01-02(06) Minutes of meeting LC Paper No. CB(2) 390/02-03(05)
	20 November 2002	Paper provided by the Administration – LC Paper No. CB(2) 390/02-03(04) Minutes of meeting LC Paper No. CB(2) 767/02-03
	25 February 2003	Minutes of meeting LC Paper No. CB(2) 1513/02-03
	18 December 2003	Paper provided by the Administration – LC Paper No. CB(2) 667/03-04(03) Minutes of meeting LC Paper No. CB(2) 1261/03-04
	<i>(Paper issued on 16 September 2005)</i>	Paper provided by the Administration on “Regulatory Control of “Private Kitchens” LC Paper No. CB(2) 2598/04-05(01)