

## **Executive Summary**

### **Direct Investigation into Government's Regulation of Factory Canteens**

#### **Background**

The rapid development of industries in Hong Kong during the 1950s and 1960s had led to the emergence of factory canteens that provided meals for factory workers in industrial buildings. It has been the Government's requirement since 1 August 1980, that all factory canteens must apply for and obtain a factory canteen licence before opening business. If operating a factory canteen in an industrial building is against the lease conditions of the land lot where the building is located, the land owner must also apply to the Government for a waiver / modification of the lease conditions.

2. The Government requires that factory canteens can only serve factory employees working in the industrial building. Nevertheless, in recent years, many factory canteens also serve public customers in a high-profile manner and the operators have been engaging in such wrongful activity as if it were acceptable. Yet, it is very doubtful whether the facilities for fire safety and food hygiene of such canteens are suitable for serving public customers. Past incidents have shown that a fire outbreak in an industrial building could bring disastrous consequences. In this light, The Ombudsman has conducted this direct investigation to examine the Government's policy, licensing system and regulatory regime for factory canteen licences, with a view to making recommendations to the relevant departments for improvement.

#### **Requirements Relating to Operation of Factory Canteens**

##### *Factory Canteen Licences*

3. The **Food and Environmental Hygiene Department** ("FEHD") is responsible for approving and issuing factory canteen licences. One of the main licensing conditions is that a factory canteen can only serve factory employees who work in the same building, **and** such employees must hold an employee card signed and issued by their employers.

4. Since factory canteens can only serve factory employees working in the same building, the food they provide and their mode of operation should be relatively simple. Consequently, compared with a general restaurant licence, the standard specified by a factory canteen licence for food room is lower. For a factory canteen with a floor area under 100 square metres, the food room should not be less than 14% of the total floor area of the canteen, subject to a minimum of 5 square metres. This standard is far lower than that of 25% for the food room of a general restaurant (the minimum being 8 square metres).

5. FEHD staff regularly inspect factory canteens (at least once every 20 weeks) to check their compliance with food hygiene standards and licence conditions.

### ***Land Lease Conditions***

6. The land leases of most industrial lots restrict the use of factory units to “industrial/godown” only. An owner of a factory unit wishing to set up a factory canteen, therefore, has to apply to the **Lands Department** (“Lands D”) first for a “waiver letter to permit a canteen within an industrial building” (“Waiver”) for lifting the above land use restriction in the land lease. Unlike other waivers for land use modification, the operator of a factory canteen having obtained a Waiver does not need to pay an additional premium to the Government to make up for the difference in rateable value of the premises resulting from the change in the land lease conditions (“waiver of additional premium”).

7. A factory canteen granted a Waiver must observe the following conditions:

- (1) It can only serve factory employees working in the same building.
- (2) It should not have a separate entrance/exit, or entrance/exit (except fire escapes) that directly leads to a public road, street or land.
- (3) It should not display promotional materials such as signs, notices or posters, or use transparent or semi-transparent materials for its external walls.

### **Our Findings**

8. Our investigation has found that many factory canteens serve public customers in breach of the licence conditions and violate the land lease conditions.

### ***Serving Public Customers in Breach of Licence Conditions***

9. Evidence suggesting that factory canteens are apparently serving public customers includes:

- (1) newspaper columns and food magazines from time to time recommending certain factory canteens to general readers;
- (2) websites and dedicated pages in social media networks set up by factory canteens for promotion; and
- (3) the personal experience of our investigation officers patronising factory canteens many times and yet having been asked whether they were factory employees.

10. **Case 2** cited in Chapter 4 of our investigation report depicts some 15 factory canteens in a certain urban industrial building, offering cuisines of different countries. Some even provide alcoholic drinks, children's meals, cooking classes and catering services for private parties.

#### FEHD's Explanation

11. Under the current licensing policy, no limit is set on the number of factory canteens within a single industrial building. It merely specifies that the total floor area of factory canteens must not exceed 10% of the gross floor area of the industrial building where they are located. Neither does FEHD restrict the types of dishes or kinds of food that factory canteens can serve. The Department contends that the factory canteens in **Case 2** offer a wide variety of cuisines just because they have to cope with market competition and to cater for consumer preferences, which is not unreasonable.

12. In case of a factory canteen breaching the licence conditions by serving public customers, FEHD may issue a verbal/written warning. The Department may further make a prosecution, or even revoke the licence of the factory canteen. However, between 2012 and 2015, FEHD only issued one verbal warning, whereas between 2016 and 2017, i.e. after our intervention, it issued 36 verbal warnings and instituted 31 prosecutions against 27 factory canteens.

#### *Violation of Lease Conditions*

13. Activities of factory canteens that violate the lease conditions include:

- (1) factory canteens located on the ground level using the means of escape leading to the public streets as an entrance/exit for customers; and
- (2) factory canteens using transparent materials for external walls, putting up signs and displaying menus and other promotional materials.

14. In **Case 1** cited in Chapter 4 of our investigation report, the factory canteen concerned has been in operation at the communal car park of an industrial building for more than 30 years, despite the fact that it has never been able to obtain a Waiver from Lands D. Although Lands D is well aware of the factory canteen's serious violation of the lease conditions, no lease enforcement action has been taken.

#### Lands D's Explanation

15. Under the current procedures, if FEHD notices during its inspection that a factory canteen may have violated the lease conditions, it will refer the case to Lands D for follow-up. When such violation is confirmed, Lands D will take lease enforcement action against the owner of the factory unit concerned. The main procedures are as follows:

- (1) to issue a warning letter, requiring the owner concerned to rectify the violation of lease conditions within a specified period;
- (2) to register the warning letter with the Land Registry so as to impose an encumbrance on the property concerned, if the violation of lease conditions is not yet rectified after the deadline; and
- (3) to exercise its statutory power to re-enter the premises if the violation continues to be serious after registration of the warning letter.

16. If a factory canteen serving public customers is located in an industrial building with godowns for dangerous goods, it will be targeted in the first round of enforcement actions under Lands D's "risk-based enforcement arrangements" against violations of lease conditions in industrial buildings. The owner of the factory unit concerned must rectify the violation within 14 days after Lands D has issued a warning letter; failing which, Lands D will re-enter the factory unit.

17. Regarding **Case 1**, Lands D's explanation was that the factory canteen in question occupied only a very small area (0.23% of the gross floor area of the building). As the canteen is located in the communal area, any lease enforcement action by Lands D would have to be taken against all building owners, and that would be unfair to them.

## **Our Comments**

### ***Adverse Consequences and Impact of Factory Canteens' Breach of Licence and Lease Conditions***

18. Where factory canteens breach the licence and lease conditions by serving public customers, it may have the following adverse consequences and impact:

- (1) People other than those who work in the industrial building may not be familiar with the internal setting of the building and so they would have to face higher risks in case of a fire outbreak. In fact, the **Fire Services Department** has included the following reminder in the fire safety standards set out for factory canteens, namely, the "Fire Safety Standards for Factory Canteens with Low Fire Potential" and the "Fire Safety Standards for Factory Canteens with High Fire Potential":

*"The admission of members of the public to any industrial building may expose them to fire dangers they are unaware of, nor prepared to face. Therefore non-regular users of the building should be discouraged and persons in the following categories restricted from using any factory canteen:-*

- *those who are of very old or young age to require care and attention of any other adult; and*
  - *those who are physically handicapped.”*
- (2) The standard of food room in a factory canteen may not be able to cope with a heavy flow of public customers. This poses food safety hazards to the customers.
  - (3) Since factory canteens can enjoy such concessionary benefits as waiver of additional premium and also lesser requirements for facilities, they can operate their business at lower costs compared with general restaurants. This will constitute an unfair competitive advantage if factory canteens are open to public customers, as if they were general restaurants, in violation of the conditions of the Waiver.
  - (4) Factory canteens serving public customers are clearly in violation of the lease conditions. If they are still allowed to enjoy the “waiver of additional premium” as “factory canteens”, that would mean a loss of revenue to the Government.

### ***Out-dated Licensing Policy on Factory Canteens***

19. Since licensing of factory canteens was introduced nearly 40 years ago, the Government has not conducted any comprehensive review of the licensing policy, nor has it plugged the loopholes in the system. The policy continues to allow the total area of factory canteens (irrespective of their number) in an industrial building to be as much as 10% of the gross floor area of the building, even though the actual demand for factory canteens has dropped over the years with factory jobs dwindling and an abundance of inexpensive eateries cropping up in the vicinity of many industrial buildings. Consequently, many operators have exploited the policy loopholes, obtained factory canteen licences, and enjoy the lower costs of operating food establishments in industrial buildings, serving public customers as if they were general restaurants.

### ***Lack of Rigorous Control by Both Departments in Approving Applications***

20. FEHD, the licensing authority, adopts a lax attitude towards the kinds of cuisines and food that factory canteens can serve. It fails to consider whether the standard of food room in factory canteens can cope with the sumptuous cuisines and banquets that some factory canteens offer.

21. And Lands D, the administrator of land leases, similarly fails to consider and assess prudently whether each application is fully justified, before granting a Waiver. Information shows that around 60% of factory canteens are on the ground level of industrial buildings, with quite a number of them located in the now commercialised districts, such as Kwun Tong. The amounts of additional premium thus waived are

obviously rather substantial.

### ***FEHD Turning a Blind Eye in Routine Inspections***

22. As shown by the figures cited in paragraph 12 above, FEHD in the past seldom took enforcement action against factory canteens which served public customers in breach of the licence conditions. **Cases 1 and 2** also show that during routine inspections of factory canteens, FEHD officers did not check the employee cards of customers, nor did they conduct any decoy operations.

23. We consider that FEHD, as the licensing and regulatory authority, has the power and responsibility to require factory canteen operators to verify the identity of customers when they are served. Serving public customers may result in higher turnover and increased inventory of food exceeding the capacity of the simple food room in a factory canteen, thereby affecting food safety and hygiene and posing a potential food safety risk to customers. Therefore, verification of the identity of customers is important.

### ***Lands D's Inadequate Enforcement Actions against Violation of Lease Conditions***

24. As shown in **Cases 1 and 2**, Lands D's enforcement actions against violation of lease conditions by factory canteens are extremely inadequate. In **Case 1**, Lands D failed to consider how the violation by the factory canteen concerned might be affecting the public. Instead, it kept on worrying about the interests of the owners of the building should lease enforcement action be taken. This is totally unacceptable. In **Case 2**, Lands D did take enforcement action against the violation of the lease conditions by the factory canteens, but only in a superficial manner, such as causing the canteens to cover up their shop signs and directional signs for entrance/exit. Nothing has been done to effectively stop the canteens from serving public customers and using means of escape for access by customers.

### ***Lack of Coordination Weakening Enforcement***

25. **Case 1** shows that FEHD and Lands D have shirked their enforcement responsibilities to each other and they have taken no action for years. As a result, the factory canteen has continued to operate in breach of the lease conditions for more than 30 years. In **Case 2**, despite the obvious violation of the lease conditions by so many factory canteens, it was not until after our intervention that FEHD referred the problem to Lands D for follow-up. The above cases reflect deficiencies in the referral and coordination mechanism between the two departments.

## **Recommendations**

26. In the light of the above, The Ombudsman urges:

***Lands D***

- (1) to tighten up the system for granting Waiver, so as to ensure that in all cases there is a genuine need to set up a factory canteen in the industrial building concerned;
- (2) to strictly adhere to the “risk-based enforcement arrangements” in taking lease enforcement actions against those factory canteens violating the lease conditions;

***FEHD***

- (3) to conduct a comprehensive and in-depth review of the policy on licensing factory canteens, jointly with relevant policy bureaux and Government departments, so as to ensure that a factory canteen licence will only be issued where the industrial building/factory concerned really needs a canteen;
- (4) to draw up clear and specific inspection guidelines, enhance training and supervision of frontline officers, and make more use of decoy operations; and

***Lands D and FEHD***

- (5) to set up a coordination and mutual referral mechanism for effective regulation of factory canteens, and clearly set out the powers and responsibilities of the two departments.

**Office of The Ombudsman  
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