

Executive Summary Direct Investigation Report

Food and Environmental Hygiene Department's Regulation over Sale of Food in Hot/Cold Holding and Non-prepackaged Beverages by Means of Vending Machine

Introduction

In recent years, more and a wider variety of food in hot/cold holding and non-prepackaged beverages are available by vending machines emerging on the market. The products on sale are mainly non-prepackaged beverages (including coffee, tea, drinking water and freshly squeezed orange juice) and ready-to-eat food items which require temperature control or simple processing on site. Under the Food Business Regulation (Cap. 132X), any person who intends to engage in this mode of food business must first apply to the Food and Environmental Hygiene Department ("FEHD") for a permit to sell food by means of vending machine ("VM Permit"), and comply with a range of licensing requirements and conditions for food safety and environmental hygiene.

2. Our investigation reveals that some permit holders have not complied stringently with the licensing requirements and conditions imposed by FEHD, including not storing food at the required temperature and failing to empty regularly the containers for litter or liquid waste inside the machine, and there is room for improvement on the part of FEHD in licensing control.

Our Findings

3. In sum, this Office has the following comments and recommendations regarding FEHD's regulation over the sale of food in hot/cold holding and non-prepackaged beverages by means of vending machine.

(I) Should Record Details about Devices and Operation of Licensed Vending Machines

4. In the course of processing VM Permit applications, FEHD basically would not request applicants to submit any information about the devices or operation of vending machines, including information directly related to compliance with the licensing requirements and conditions, such as the internal/external design of the machine to keep out insects, rodents and dust, whether and how the food storage temperature inside the machine is recorded automatically and constantly, the parts inside the machine that require regular cleansing and sterilisation, the operation of automatic cut-off device (if any), etc. This Office finds some case files of licensed vending machines containing no information about their exterior, design or operation.

5. In our view, FEHD should collect and record details about the exterior, design and operation of each licensed vending machine, which can be used as the reference and basis for approving the VM Permit application, as well as provide its staff specific information to conduct routine inspection or handle suspected breaches of licensing conditions in future, thereby enhancing enforcement effectiveness.

(II) Should Keep Specific Records of Pre-approval Inspection

6. Our investigation reveals that even though the VM Permit applications were for selling the same food type, FEHD's records of those pre-approval inspections varied considerably in format and level of details. Some case files simply stated that inspection was completed and confirmed the applicant's compliance with all requirements, while some other case files recorded the findings of the inspections and the compliance status with respect to each requirement, with photographs taken during site inspections attached.

7. This Office considers site inspection to be a crucial procedure before FEHD's approval of VM Permit applications for protecting public health and food safety. FEHD should draw up guidelines instructing its staff on how to record specifically the findings of a site inspection with respect to each licensing requirement, including checking their observations against information provided by the applicant about the devices and operation of the vending machine. This will be helpful for ensuring proper conduct of the inspections as well as consistent standards and practices across all inspecting staff.

(III) Licensing Conditions Phrased Too Broadly

8. FEHD has formulated the licensing conditions with focus on the daily operation, maintenance and cleansing of vending machines. In particular, permit holders are required to constantly monitor and record the temperature at which the food is being stored in the machine, regularly cleanse and sterilise the inside of machine, and keep a record of such services. Nevertheless, the licensing conditions do not stipulate at what interval the internal temperature of machine should be recorded, the frequency of internal cleansing, and the items to be included in the servicing records. Our concern is that if FEHD's provisions for the actions required are phrased too broadly, the regulatory effect might be compromised. For instance, if the temperature of machine is taken just once daily, or its internal parts are cleansed and sterilised just once monthly, it is doubtful whether such actions are sufficient for FEHD to reasonably evaluate the operation and hygienic condition of machine for protecting food safety.

9. Given the varying designs and functions of vending machines, in our view, FEHD can require applicants to specify their own pledges upon application regarding the frequency of monitoring and cleansing, as well as the format of servicing records.

Such pledges can be incorporated in the licensing conditions of vending machines if agreed by FEHD. This will form a solid and specific basis for both FEHD and permit holders to ascertain compliance with the conditions.

(IV) Licensing Control of Vending Machines to be Strengthened

Temperature and Servicing Records of Vending Machines Have Never Been Checked

10. When FEHD staff conduct routine inspection on licensed vending machines, permit holders or their staff are normally not present to open the machines' doors for FEHD to inspect the inside of machines. However, many licensing conditions involve the operation, cleansing or maintenance of a machine's internal facilities. It is difficult to evaluate accurately the compliance with those conditions by merely observing the exterior of machines.

11. Moreover, FEHD's licensing conditions require permit holders to keep logging records of the temperature and cleansing and sterilisation of the machines for inspection by FEHD. Nevertheless, our investigation reveals that FEHD has never asked any permit holders to present those records for inspection or reference. This Office considers that these records, in addition to facilitating FEHD's investigation in case of food safety incidents or complaints, serve a more important and proactive purpose of reminding permit holders to stringently comply with the requirements for machine operation and maintenance, thereby controlling the associated food safety hazards. FEHD should check those records randomly from time to time, and consider requiring permit holders to take photos showing the condition of relevant machine parts after servicing as available records for inspection by FEHD. This can compel permit holders to properly comply with the licensing conditions at all times.

More Proactive Bacteriological Testing to Strengthen Control

12. Under the licensing conditions, FEHD prescribes the types and standards of satisfactory bacteriological samples for vending machines of drinking water (with no drinking utensil provided) and freshly squeezed orange juice. Three consecutive unsatisfactory bacteriological samples of water/orange juice within six months will result in suspension of the permit, and subsequent failure to improve within a specified period may lead to cancellation of the permit.

13. However, in response to our enquiry about how the compliance of permit holders with this condition is monitored, FEHD only referred to the Food Surveillance Programme of its Centre for Food Safety ("CFS") and cited a risk assessment study related to vending machines, where samples of food sold by a number of vending machines were taken for microbiological testing. Yet, CFS's Food Surveillance Programme is not linked to the licensing system for food business premises. Under its routine monitoring of VM Permits, FEHD would not proactively take samples of beverages sold by licensed vending machines (with licensing conditions prescribing the

standards of bacteriological quality) for bacteriological testing, nor would it require permit holders to conduct regular testing themselves and report the results to the Department.

14. Results of bacteriological testing are objective data showing whether the beverages are safe for consumption, and regular or irregular testing can facilitate FEHD's assessment of food safety hazards. If testing results reveal an increased or even substandard level of certain bacterium, it will alert the permit holder to the need of detecting and rectifying the problem as soon as possible. This Office considers that FEHD should conduct bacteriological testing more proactively to monitor the food and beverages sold by vending machines.

(V) Additional/Improvement Measures to Facilitate Public Monitoring

15. This Office urges FEHD to step up publicity to promote public awareness of the regulation over vending machines. This will not only enhance public alertness to food safety, but also let them know that any suspected irregularities of vending machines can be reported to FEHD.

Displaying VM Permit on the Outside of Machines

16. Currently, FEHD requires all VM Permit applicants to prominently display their name, address and telephone number (if any) on the outside of the machines. To facilitate public identification of the licensing status of vending machines, this Office considers that FEHD can require permit holders to display the VM Permit or its copy on the machine, showing that it is operated with the permission of FEHD. Together with the information available on FEHD's thematic website on vending machines to be launched later, the public can learn more about the licensing requirements and conditions imposed on the vending machines of different food types, and monitor their compliance with such conditions.

Thermometer with Reading Displayed Externally

17. Our site visits found that many vending machines of food under temperature control were not fitted with an externally readable thermometer to indicate the internal temperature, nor was relevant information provided. This Office considers that in future FEHD should require all vending machines of food under temperature control to be fitted with an externally readable thermometer, or to provide relevant information, such that the public and FEHD staff can immediately know the temperature at which the food is being stored in the machine.

Improving the List of Permitted Premises

18. Our site visits found that some of the addresses on the List of Permitted Premises were unclear and insufficient for the public to locate the vending machines. In this connection, FEHD should review the address information on the list and rectify the inadequacies.

(VI) Giving Advice to Organisations Dispensing Free Food by Means of Vending Machine to Ensure Food Safety

19. This Office notes that some social welfare organisations have been dispensing free food, frozen or in hot holding, by self-service machines to support people in need. Since the operation is not considered to be food business, those organisations need not apply for food business licence or VM Permit for those self-service machines from FEHD. From the perspective of food safety, this Office considers that FEHD should provide relevant organisations with important information and good practices in dispensing food by self-service machines, thereby safeguarding public hygiene and health.

Recommendations

20. In the light of our findings, The Ombudsman has made ten recommendations to FEHD:

- (1) require VM Permit applicants to submit information about the devices and operation of vending machines and keep it in the case files;
- (2) update existing guidelines with instructions to staff on how to compile specific records of pre-approval inspection;
- (3) beef up the licensing conditions with clear and specific details on temperature control, machine cleansing and sterilisation, and record keeping;
- (4) explore stepping up random checks on the permit holder's records of temperature control and machine cleansing and sterilisation as part of its monitoring work;
- (5) explore the feasibility of more proactive bacteriological testing of food and beverages sold by means of vending machine, thereby reinforcing licensing control;

- (6) step up publicity to raise public awareness of licensed vending machines and relevant licensing conditions;
- (7) revise licensing requirements such that permit holders shall display the VM Permit or its copy on the outside of machines, and disseminate information about the licensing requirements/ conditions imposed on vending machines to facilitate public monitoring of their compliance;
- (8) require all vending machines of food under temperature control to be fitted with an externally readable thermometer or to provide relevant information;
- (9) review the List of Permitted Premises available on FEHD website to ensure that the addresses listed thereon are sufficient for the public to locate the vending machines; and
- (10) from the perspective of food safety, provide organisations dispensing free food by self-service machines with important information and good practices for safeguarding public hygiene and health.

**Office of The Ombudsman
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