

香港申訴專員公署
Office of The Ombudsman, Hong Kong



主動調查報告
Direct Investigation Report

食物環境衛生署對以售賣機出售熱存 / 冷存食物
及非預先包裝飲品的規管
Food and Environmental Hygiene Department's Regulation
over Sale of Food in Hot/Cold Holding and
Non-prepackaged Beverages by Means of Vending Machine

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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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1

INTRODUCTION

BACKGROUND

1.1 In recent years, more and a wider variety of vending machines selling food in hot/cold holding and non-prepackaged beverages are 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.

1.2 Under the Food Business Regulation (“the Regulation”), Cap. 132X, except with the written permission of the Director of Food and Environmental Hygiene, no person shall sell any restricted foods, including food sold by means of a vending machine. Generally, 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”). FEHD has a mechanism in place to process VM Permit applications. After granting a VM Permit, if the permit holder is found to be in breach of licensing conditions, FEHD may issue a warning to the permit holder or even cancel the permit.

1.3 These have been media reports on the temperature of vending machines selling food in hot holding being below the level required under the permits, or even food vending machines operating without permits, posing a threat to food safety. FEHD, as the gatekeeper of food safety and public health, should act pre-emptively amid the growth of this business mode to ensure that its regulatory measures are effective to protect public health.

1.4 Against this background, The Ombudsman declared on 28 March 2023 a direct investigation against FEHD pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap. 397).

SCOPE OF INVESTIGATION

1.5 The scope of this direct investigation covers:

- FEHD's regulation over the sale of food in hot/cold holding and non-prepackaged beverages by means of vending machine;
- FEHD's licensing system for issuing relevant permits or written permissions, and licensing control over permit holders;
- FEHD's enforcement against unlicensed operation of vending machines; and
- any areas for improvement.

PROCESS OF INVESTIGATION

1.6 On 28 March 2023, we announced the launch of this direct investigation and invited public views on this topic. On 16 October, we issued a draft investigation report to FEHD for comments, and received its reply on 5 December. Upon considering and incorporating its comments as appropriate, we completed this final report on 12 December 2023.

2

RELEVANT LEGISLATION AND FEHD'S REGULATORY SCOPE

RELEVANT LEGISLATION

2.1 FEHD stated that all food sold in Hong Kong must comply with the requirements for food safety and standards under the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislation. The licensing system established by FEHD under the Regulation aims to protect food safety and public health.

2.2 Pursuant to section 30(1) of the Regulation, any person who carries on the business of selling restricted foods (including food sold by means of a vending machine) listed in Schedule 2 to the Regulation must obtain written permission from FEHD to sell the particular type of restricted foods before commencing the business. Otherwise, the person commits an offence and is liable to a maximum fine of \$50,000 and imprisonment for six months upon conviction.

2.3 FEHD added that pursuant to section 4 of the Regulation, “food business” means any trade or business for the purpose of which any person engages in the handling of food or food is sold by means of a vending machine. In other words, if the provision of food by means of vending machine is free of charge and not considered to be food business, application to FEHD for food business licence or permission is not required.

WRITTEN PERMISSION TO SELL FOOD BY MEANS OF VENDING MACHINE

2.4 Under FEHD's existing policy, its written permission is not required if the machine is used for selling:

- (1) drinks (such as bottled or canned drinks) and sterilised milk in original sealed containers; and
- (2) cakes, biscuits, confections or food of the like nature in original sealed wrappers or containers (such as prepacked snacks or light refreshments).

2.5 To decide whether the vending machine of a particular type of food is exempted from obtaining written permission, FEHD would consider the nature of the food, including such factors as the storage duration or shelf life, type of packaging and storage conditions. This direct investigation focuses on the sale of food in hot/cold holding and non-prepackaged beverages by means of vending machine outside the above two categories, and prior written permission from FEHD is required for operators carrying on the relevant business.

2.6 Based on the statutory provision cited in **paragraph 2.2**, FEHD issues VM Permits to eligible applicants who intend to sell food by means of vending machine. Each permit is for one machine only. Applicants intending to operate more than one food vending machine are required to obtain a permit from FEHD for each machine, and to comply with the licensing requirements and conditions imposed by FEHD in respect of the particular type of food sold by the machine. After being granted a permit, the applicant shall comply with all the licensing requirements and conditions at all times.

2.7 Separately, food business licence applicants/licensees who intend to also sell food by means of vending machine within the licensed area of their premises may apply to FEHD for an endorsement onto their food business licence under section 30(2)(a) of the Regulation, instead of obtaining a VM Permit. The endorsement is valid for so long as the food business licence. FEHD said that the endorsement conditions are similar to the licensing requirements and conditions imposed under VM Permits. According to FEHD records, as at September 2023, there was only one valid food business licence with endorsement to sell food by means of vending machine.

2.8 VM Permits and food business full licences (with or without endorsement) are both valid for 12 months. FEHD will issue a renewal notice nine weeks preceding the expiry of permit/licence, reminding the permit holder/licensee to complete the renewal procedures with FEHD before its expiry.

2.9 If the permit holder/licensee fails to apply for renewal on time, FEHD will issue a reminder after the expiry of relevant permit/licence urging the permit holder/

licensee to renew it within 15 days from the date of the letter, otherwise FEHD will revoke the right to renew the permit/licence if it is not renewed within 30 days after expiry; FEHD will also take legal action against the operator for carrying on food business without a valid permit/licence. If no application for renewal is received after the above grace period of 15 days, FEHD will then issue a final warning to the permit holder/licensee by registered mail, stating that unless the permit/licence is renewed within 15 days from the date of the letter, FEHD will revoke the right to renew the permit/licence.

2.10 Where no renewal application is received from the permit holder/licensee after the expiry of grace period aforesaid, or the permit holder voluntarily surrenders the permit and no longer carries on the business of selling food by means of vending machine, FEHD will cancel the VM Permit/endorsement on the licence.

2.11 **Table 1** shows the statistics on the number of vending machines with VM Permits for the sale of food in hot/cold holding and non-prepackaged beverages issued by FEHD each year between 2018 and 2023.

Table 1: Number of vending machines with VM Permits issued each year for the sale of food in hot/cold holding and non-prepackaged beverages (2018 to 2023)

	No. of vending machines with VM Permits issued to sell the following types of food			
	Food in hot holding	Food in cold holding	Non-prepackaged beverages	Total
As of 31 December in the years below				
2018	36	4	62	102
2019	37	4	164	205
2020	57	8	291	356
2021	62	18	308	388
2022	70	17	325	412
As of 30 September in the year below				
2023	83	50	356	489

REGULATORY SCOPE

2.12 FEHD said that the purpose of its licensing is to ensure that the premises and vending machines comply with hygiene standards, and the products supplied are hygienic. When granting written permission, FEHD will stipulate provisions for hygiene facilities such as water supply and cleansing facilities inside the machine, litter container, etc., as well as require the applicant to place the machine in a satisfactory position. A “satisfactory position” means that it should not encroach on any pavement or street; the space around and under the machine can be easily cleaned; other business conducted on the premises will not pose a risk of contamination to the food sold by the machine; an outdoor machine should be protected from contamination and weather conditions, etc. In addition, FEHD imposes suitable conditions specific to the type of products for sale to ensure environmental hygiene and food safety.

2.13 FEHD’s information showed that currently the vast majority of written permissions to sell food by means of vending machine are granted in the form of VM Permit (see **paras. 2.7 and 2.11, Table 1**). FEHD has drawn up staff guidelines for processing VM Permit applications with points to note regarding vending machines of different types of products. This Office has scrutinised the guidelines for different products, including the licensing requirements and conditions applicable to vending machines of various products, to understand FEHD’s regulatory scope and concerns about vending machines of food in hot/cold holding and non-prepackaged beverages. The products covered by the guidelines include:

- food in hot holding (e.g. hot rice rolls and hot rice boxes);
- drinking water with no drinking utensil provided;
- freshly squeezed orange juice;
- prepacked ready-to-eat vegetables in cold holding (e.g. green salad); and
- frozen confections in manufacturer’s cups and wrappers, and prepacked frozen cooked food (e.g. ice cream in original cups and ready-to-eat frozen soup).

Licensing Requirements

2.14 This Office notes that the licensing requirements for VM Permit focus on the hardware accessories of the vending machine, including its position, facilities for maintaining hygiene inside the machine and in its surroundings, devices for protecting food safety, and display of information about the permit holder.

2.15 Apart from requiring the applicant to place the vending machine in a specified satisfactory position (see **para. 2.12**), FEHD's licensing requirements also stipulate that the machine should be equipped with specified facilities to maintain hygiene inside the machine and in its surroundings. For instance, doors of the machine should be tight-fitting; food delivery orifices should be equipped with tight-fitting, self-closing doors or covers; and all ventilation louvers or openings to the machine should be effectively screened to keep out insects, rodents and dust.

2.16 The licensing requirements related to food safety devices vary according to the types of food for sale. Machines selling food under temperature control are required to be fitted with a thermometer indicating prominently the temperature at which the food is being stored. Moreover, FEHD requires each machine to be equipped with an automatic cut-off device to stop its sale in specified circumstances and notify the permit holder for follow-up action. Examples of thresholds triggering automatic cut-off under the licensing requirements are as follows:

<u>Products sold by the machine</u>	<u>Threshold for automatic cut-off</u>
(1) Food in hot holding	: Food storage temperature falls below 60°C
(2) Drinking water with no drinking utensil provided	: All liquid waste storage tanks inside the machine are full
(3) Freshly squeezed orange juice	: All waste storage tanks inside the machine are full
(4) Prepacked ready-to-eat vegetables in cold holding	: Food storage temperature rises above 4°C
(5) Frozen confections in manufacturer's cups and wrappers	: Food storage temperature rises above -2°C
(6) Prepacked frozen cooked food	: Food storage temperature rises above 0°C

2.17 In addition, FEHD requires all VM Permit applicants to prominently display their name, address and telephone number (if any) on the outside of machines for easy identification of their licensing status.

Licensing Conditions

2.18 The licensing conditions are formulated with focus on the daily operation of vending machines, covering such areas as sources and types of food, maintenance and hygiene of the machine, operation for protecting food safety and operation records.

2.19 The licensing conditions stipulate that only prepacked/originally packaged food products or drinking water supplied by licensed food factories or lawful sources are allowed to be sold by the machine. All food products shall be handled, transported and dispensed in a hygienic manner, with appropriate temperature maintained during delivery. Moreover, the machine should be used for the sale of food specified on the permit only.

2.20 Regarding the maintenance and hygiene of the machine and the operation for protecting food safety, the permit holder is required not only to maintain the machine in good repair and efficient working condition and keep its surroundings clean, but also to keep records for the operation of the machine. Examples of such licensing conditions are as follows:

- (1) If the food sold by means of the machine requires temperature control (see **items (1), (4), (5) and (6) in para. 2.16**), the permit holder shall keep a record of the food storage temperature of the machine, showing the temperature across the daily operation time. The record shall be kept for at least 30 days and available for inspection by FEHD staff.
- (2) All food contact surfaces of the machine shall be regularly cleansed and sterilised, with special cleansing and sterilisation carried out if required by FEHD. A record of cleansing and sterilisation services shall be kept for at least 90 days and available for inspection by FEHD staff.
- (3) Containers for litter or liquid waste inside the machine shall be emptied immediately when full, or at least once daily.

- (4) In case of the cut-off device mentioned in **paragraph 2.16** being activated, the permit holder shall take follow-up action before resetting the machine to resume sale operation.
- (5) For machines selling drinking water (with no drinking utensil provided) and freshly squeezed orange juice, the permit holder shall take all necessary steps to ensure that the drinks for sale are free from contamination and any bacteriological sample taken thereof is satisfactory¹. Three consecutive unsatisfactory bacteriological samples within six months will result in suspension of the permit, and additional substandard samples within 12 months may lead to further suspension or even cancellation of the permit.

2.21 FEHD said that it would follow up and require permit holders to rectify any breach of the licensing requirements or conditions. For details of its licensing control, see **chapter 3** of this report.

¹ According to the type of products sold by the vending machine, FEHD's licensing conditions will prescribe the types and standards of satisfactory bacteriological samples.

3

PROCESSING OF VENDING MACHINE PERMIT APPLICATIONS AND REGULATORY CONTROL

3.1 As mentioned in **paragraph 2.11**, currently the vast majority of written permissions to sell food by means of vending machine are granted in the form of VM Permit. This chapter elaborates on FEHD's general procedures for processing VM Permit applications and routine regulation over food vending machines operated with written permission.

PROCEDURES FOR PROCESSING VENDING MACHINE PERMIT APPLICATIONS

3.2 Upon receiving a written application for VM Permit (including the completed application form for a permit to sell restricted foods, a sketch of building plan showing the proposed location of vending machine, and supporting documents regarding the applicant's identity or company particulars), FEHD Health Inspector will make an appointment with the applicant to inspect the premises concerned to assess whether it is suitable for carrying on the proposed business of selling food by means of vending machine and eligible for a permit, and to ensure that the applicant has not operated unlicensed business before obtaining the permit. Depending on the actual circumstances, FEHD may seek advice from other departments regarding the application.

3.3 After the inspection, if FEHD considers the application eligible, it will issue to the applicant a notice prescribing the licensing requirements and conditions for compliance by the applicant.

3.4 The applicant is required to notify FEHD after fulfilling all the licensing requirements. FEHD will then arrange for site inspection by Health Inspector to ascertain the applicant's compliance with the licensing requirements. Upon on-site confirmation by Senior Health Inspector that all the licensing requirements have been fulfilled, FEHD will issue a VM Permit to the applicant and remind the applicant to comply with the licensing conditions at all times and to meet any requirements imposed by other Government departments (e.g. the Fire Services Department and the Buildings Department).

3.5 A list of premises with VM Permits ("List of Permitted Premises") is available on FEHD website for public information. The list provides the address of each premises where a licensed vending machine is placed, the shop sign, the type of products for sale, and the number and validity period of the permit.

LICENSING CONTROL OF VENDING MACHINES

Routine Inspection

3.6 After issuing a permit, FEHD staff will inspect the vending machine and the premises where it is placed at least once every three months to monitor the permit holder's compliance with the licensing requirements and conditions.

3.7 FEHD remarked that the sale of food by means of vending machine is operated in a mode different from general food business, as permit holders or their staff are not present at all times to operate the business. 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 the machines. Nevertheless, FEHD staff will evaluate whether a permit holder has properly managed and operated the machine in compliance with the licensing requirements and conditions by examining its external and hygienic condition; whether the temperature measuring device is operating properly; whether the machine doors and covers of food delivery orifices are tightly fitted to keep out insects, rodents and dust; whether the machine is maintained in good repair and efficient working condition; and the environmental

hygiene of its position. Where necessary (such as in case of complaints or food poisoning incidents), permit holders will be called in to assist in follow-up investigation.

Inspection of Records Kept by Permit Holders

3.8 As mentioned in **paragraphs 2.20(1) and (2)**, FEHD's licensing conditions for vending machines of food in hot/cold holding and non-prepackaged beverages stipulate that permit holders should regularly cleanse and sterilise all food contact surfaces inside the machines, and keep a record of such services. If the food for sale requires temperature control, permit holders shall also keep a record of the food storage temperature across the daily operation time of the machines. The record shall be kept for a period specified under the licensing conditions and available for inspection by FEHD staff.

3.9 Nevertheless, FEHD has not drawn up any requirements or instructions regarding the content of such records, such as the frequency of regular cleansing, and whether a record of servicing staff should be kept. As regards the lack of instructions on how permit holders should keep a record showing the "food storage temperature across the daily operation time" of the machine (such as at what interval the temperature should be taken), FEHD replied that vending machines differ in designs and functions, and hence different methods may be used for temperature measurement and recording.

3.10 This Office has asked FEHD for its records of inspecting the above records, but FEHD replied that no permit holders have ever been requested to present the above records (or copies thereof) for inspection or reference.

Monitoring Test Results of Bacteriological Samples

3.11 Moreover, FEHD has prescribed the bacteria to be tested and the 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 (see **para. 2.20(5)**).

3.12 In response to our enquiry about how it monitors the compliance with this licensing condition, FEHD replied that its Centre for Food Safety ("CFS") operates the Food Surveillance Programme on a risk-oriented basis, under which food samples are

taken for microbiological, chemical and radiation testing to assess food hazards. Yet, the Programme is not linked to the licensing system for food business premises.

3.13 FEHD added that CFS has adopted a risk-oriented approach to determine the types, quantities and tested items of food samples, taking into account such factors as local surveillance results in the past, food incidents in Hong Kong and overseas jurisdictions, food consumption patterns of the public, information and intelligence from various sources such as the media and stakeholders, new food safety laws and regulations, and emerging food purchase modes. Moreover, in view of the increasing popularity and diversity of food sold by means of vending machine in recent years, CFS conducted a study to assess the microbiological quality of ready-to-eat food items of higher risk sold by local vending machines, and to provide an overview from a microbiological perspective on their mode of operation. According to the results released by CFS in January 2023, a total of 120 samples of ready-to-eat food items sold by means of vending machine were collected between November 2020 and June 2021, including food in hot/cold holding, freshly squeezed orange juice, non-prepackaged beverages, drinking water with no drinking utensil provided, etc. All samples were satisfactory in terms of the hygienic indicator organism tested.

Mechanism for Handling Irregularities

3.14 Currently, FEHD handles breaches of the licensing requirements or conditions according to a warning letters system, under which a series of administrative measures will be taken against food business premises (including premises with a permit to sell restricted foods) in breach of the licensing conditions. The measures are as follows:

- (1) A verbal warning will be issued requiring the permit holder to rectify a breach of licensing requirements or conditions detected on the licensed premises.
- (2) In the follow-up inspection, if the permit holder is found to have rectified the irregularity, FEHD will issue an advisory letter regarding the verbal warning, reminding the permit holder to avoid recurrence of the same irregularity within six months.
- (3) If the permit holder is found to have not rectified the irregularity in the follow-up inspection, or the irregularity recurs within six

months from the date of the verbal warning, FEHD will issue a warning letter with a validity period of six months.

- (4) After the permit holder has been issued three warning letters within six months due to a breach of one or more licensing requirements or conditions, FEHD will consider cancelling a permit if a further irregularity is detected.

3.15 If the irregularity constitutes an offence, FEHD will prosecute the offender(s) instead of handling it under the warning letters system.

3.16 FEHD information shows that between 2018 and 2022, no permit holders were found in breach of the licensing requirements/conditions or the endorsement conditions on the food business licence. During the same period, a total of nine complaints about food vending machines with permits or endorsement were received. The number of complaints each year ranged from one to three. In 2023, FEHD received 13 such complaints as of 30 September.

ENFORCEMENT AGAINST VENDING MACHINES OPERATED WITHOUT WRITTEN PERMISSION

3.17 Between 2018 and 2022, FEHD received a total of 18 complaints about vending machines suspected of operating without permits or endorsement (excluding machines exempted from obtaining written permission; see **para. 2.11**). The number of complaints each year ranged from one to six. In 2023, FEHD received 18 such complaints as of 30 September.

3.18 As mentioned in **paragraph 2.2**, it is an offence to sell food by means of vending machine without permission from FEHD. In the course of performing duties, if FEHD staff discover vending machines operating unlawfully without written permission, prosecution will be instituted against the offender(s).

4

CASE STUDIES AND SITE VISITS

CASE STUDIES

4.1 This Office has examined a random sample of FEHD's case files regarding vending machines selected according to food types and districts, including records of approving the VM Permit application and records of inspection. Moreover, this Office has also examined FEHD's records of handling a suspected case of operating business by means of vending machine without a permit.

Keeping Records on Devices and Operation of Vending Machines

4.2 Currently, a VM Permit applicant should submit to FEHD the standard application form for a permit to sell restricted foods, providing information on the applicant and the premises under application. A sketch of the premises showing the proposed position of the vending machine should also be attached to the application form (see **para. 3.2**). Having examined the case files of some of the vending machines selling food in hot holding or frozen desserts in original wrappers/frozen cooked food, this Office notes that FEHD had not requested applicants to submit any information about the devices or operation of vending machines, including those parts directly related to compliance with the licensing requirements and conditions (see **paras. 2.15, 2.16 and 2.20**), 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 measured and recorded automatically; the parts inside the machine that require regular cleansing and sterilisation; the operation of automatic cut-off device (if any), etc. While some of the applicants voluntarily attached supplementary information about the food suppliers or the operation manuals of vending machines to FEHD with their applications, some other case files contained no information about the exterior, design or operation of vending machines.

Records of Pre-approval Inspection

4.3 Upon receiving an application for VM Permit, FEHD will issue a notice prescribing the licensing requirements and conditions to the applicant, who is required to notify FEHD after fulfilling all the licensing requirements. FEHD will only issue a VM Permit after site inspection to ascertain the applicant's compliance with all the licensing requirements (see **para. 3.4**). Having examined three case files, all involving the sale of prepacked frozen confections, this Office notes that the level of details and the format of inspection records varied considerably from staff to staff. Some staff simply stated that inspection was completed and confirmed the applicant's compliance with all requirements, while some other staff took the initiative to prepare a list of the items under the licensing requirements, record their observations and the compliance status with respect to each requirement, and attach photographs taken during site inspection.

Handling Unlicensed Operation of Vending Machines

4.4 During our investigation, this Office enquired with FEHD after finding two vending machines of ready-to-eat rice rolls not on the List of Permitted Premises. FEHD confirmed that the vending machines on the two premises were unlicensed and it would arrange follow-up investigation. FEHD's records showed that when inspecting one of the premises in question in late October 2022, FEHD staff found the sale of both rice rolls and prepackaged bottled drinks by a vending machine without a valid permit. FEHD explained that no enforcement action was taken because its staff did not witness any transaction carried out by the machine during the 30-minute inspection. Subsequently, FEHD conducted five more inspections in around five months and found that the vending machine only offered bottled drinks and no longer served rice rolls or other food items.

OUR SITE VISITS

4.5 During our investigation, this Office conducted site visits based on FEHD's List of Permitted Premises (see **para. 3.5**) to observe the operation of vending machines of different food types in various districts.

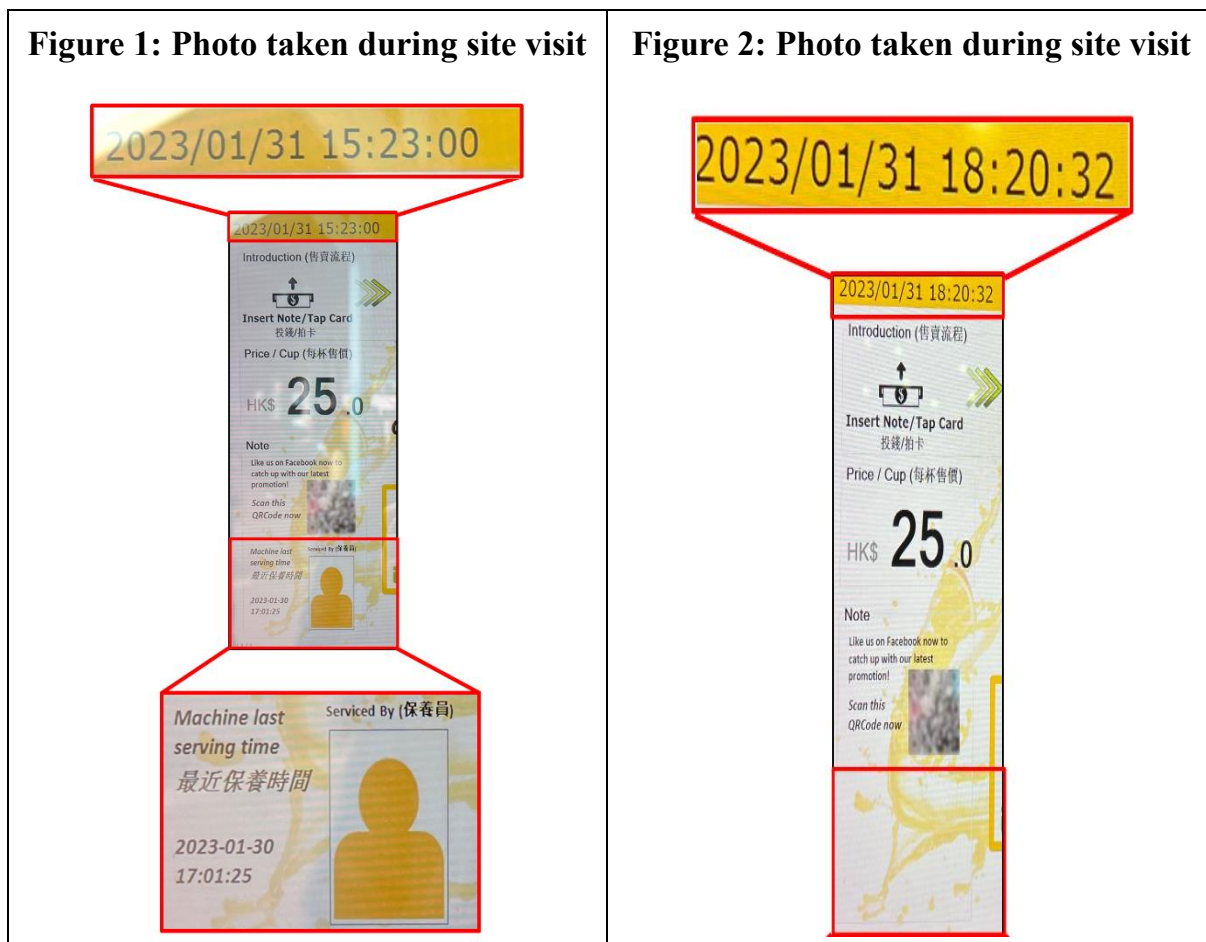
Information Displayed by Machine Insufficient to Monitor Compliance with Licensing Conditions

4.6 During our site visits for three consecutive days from 31 January to 2 February 2023, a vending machine of freshly squeezed orange juice was observed. The machine’s electronic screen displayed such information as time, temperature and “last serving time”.

4.7 One of the licensing conditions for vending machine of freshly squeezed orange juice stipulates that any litter containers placed inside the machine shall be emptied regularly, immediately on being found full and at least once daily. In other words, the permit holder is required to arrange for opening the machine’s door and cleansing its inside daily. As understood generally, the “last serving time” shown on the electronic screen should be the time when the machine’s door was opened by servicing staff on site to carry out internal maintenance, and should be taken as a reference of the time when litter containers were emptied by the permit holder. Observation during our site visits of the “last serving time” displayed on the vending machine was as follows:

Table 2: Observation of a vending machine of freshly squeezed orange juice during our site visits

Date of site visit (2023)	Time of site visit	“Last serving time” shown on screen of vending machine
31 January	3:23 pm	5:01 pm on 31 January 2023 (see Fig. 1)
31 January	6:20 pm	Not shown (see Fig. 2)
1 February	1:12 pm	9:31 pm on 31 January 2023
2 February	12:37 pm	Not shown
	6:12 pm	5:03 pm on 2 February 2023



4.8 As seen in **Table 2**, **Figure 1** and **Figure 2**, the “last serving time” was not always displayed. By merely examining the external condition of the vending machine or the information on the screen, it would be difficult for FEHD staff to ascertain whether the permit holder has carried out internal maintenance and cleansing as required under the licensing conditions, and the hygienic condition inside the machine. In this case, on both occasions where we found the vending machine to have not displayed the “last serving time”, there was a gap of more than 24 hours from the last time of maintenance recorded by us. It cast doubt on whether the permit holder might have obliterated the last time of maintenance after failing to empty the litter containers inside the machine on time.

Unclear Address on the List of Permitted Premises

4.9 In early July 2023, we visited a shopping centre at the address provided on the List of Permitted Premises to observe the operation of several vending machines placed at different locations, including two machines with addresses listed as “Location

A on Level 2” and “Location B on Level 1”² in the shopping centre. During our site visit, we found that the shopping centre did not use any alphanumeric codes to indicate the location of shops or facilities, nor were “Location A” and “Location B” listed on any directional signage inside the shopping centre. Eventually, we could not locate the two machines with the addresses.

4.10 The List of Permitted Premises provided on FEHD website aims to facilitate the public to learn whether the vending machines on the market are licensed and the specific types of food permitted to sell. FEHD should ensure that information on the list is sufficient for the public to locate the vending machines.

Ineffective Monitoring of Food Storage Temperature of Vending Machines

4.11 During our site visit in July 2023, this Office observed the operation of a vending machine of fresh eggs. At that time, the temperature shown on its electronic screen was 11°C. According to one of the licensing conditions imposed by FEHD for vending machine of prepacked eggs under cold keeping, the permit holder shall keep the storage temperature at or below 4°C, otherwise its sale operation shall be automatically cut-off. However, as observed on site, the sale operation had not stopped and the public could still purchase boxed eggs from the machine.

4.12 Meanwhile, for vending machines of food in hot holding, frozen confections in manufacturer’s cups and wrappers and/or prepacked frozen cooked food, and prepacked eggs under cold keeping, FEHD’s licensing requirements stipulate that the vending machines shall be fitted with a thermometer indicating prominently the temperature at which the food is being stored (see **para. 2.16**). Yet, 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. Unless the machines’ doors were opened for checking the thermometer inside, there was no way for the public and FEHD staff to know the temperature at which the food was being stored in the machines.

² On the List of Permitted Premises, “Location A” and “Location B” were represented by alphanumeric codes.

5

COMMENTS AND RECOMMENDATIONS

5.1 In recent years, more and a wider variety of vending machines selling food in hot/cold holding and non-prepackaged beverages are emerging on the market (see **Table 1** in **para. 2.11**). Pursuant to the Regulation, FEHD issues VM Permits and imposes licensing requirements and conditions on operators to ensure food safety and public hygiene. FEHD's capability to effectively monitor their compliance with all the requirements and conditions under VM Permits and take enforcement action against irregularities is integral to the protection of food safety.

5.2 In the light of our findings, this Office has the following observations and comments on 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

5.3 Having examined FEHD's case files of licensed vending machines, this Office notes that 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 (see **paras. 2.15, 2.16 and 2.20**) (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.). Some case files of licensed vending machines contained no information about their exterior, design or operation (see **para. 4.2**).

5.4 Although it is the responsibility of permit holders to comply with all licensing requirements and conditions, FEHD has the duty to monitor and ensure their compliance. 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 with 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

5.5 Applicants would notify FEHD after fulfilling all the requirements prescribed in the notice of licensing requirements and conditions, and FEHD would only issue VM Permits after site inspection to confirm their compliance with all licensing requirements (see **para. 3.4**). 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 (see **para. 4.3**).

5.6 The above site inspection is 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, as recommended in **paragraph 5.4**. This will be helpful for ensuring proper conduct of the inspections without omission of any items, as well as consistent standards and practices across all inspecting staff.

(III) LICENSING CONDITIONS PHRASED TOO BROADLY

5.7 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 (see **paras. 2.20(1) and (2)**). Nevertheless, the licensing conditions do not stipulate at what interval the internal temperature of machine should be recorded to show the “food storage temperature across the daily operation time”, 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, and thus the protection of food safety, might be compromised. For instance, a permit holder can be deemed to have taken action regularly if the temperature of machine is taken just once daily, or its internal parts are cleansed and sterilised just once per week or even per month, but it is doubtful whether such actions are sufficient for FEHD to reasonably evaluate the operation and hygienic condition of machine for protecting food safety. We recognise the varying designs and functions of vending machines, as mentioned by FEHD (see **para. 3.9**). 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

I. Temperature and Servicing Records of Vending Machines Have Never Been Checked

5.8 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. FEHD staff can only examine the machines’ external and hygienic condition to evaluate whether permit holders have properly complied with the licensing requirements and conditions (see **para. 3.7**). 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.

5.9 As mentioned in **paragraph 5.7**, FEHD’s licensing conditions require permit holders to keep logging records of the temperature and machine cleansing and

sterilisation for inspection by FEHD. Nevertheless, our investigation reveals that FEHD has never asked any permit holders to present those records for inspection or reference (see **para. 3.10**).

5.10 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 minimising the associated food safety risks. 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.

II. More Proactive Bacteriological Testing to Strengthen Control

5.11 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. In response to our enquiry about how the compliance of permit holders with this condition is monitored, FEHD only referred to its CFS's Food Surveillance Programme 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 (see **paras. 3.11–3.13**).

5.12 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.

5.13 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. As mentioned in CFS's report on the study related to vending machines (see **para. 3.13**), the bacteriological quality of ready-to-eat food sold by vending machines is affected by various factors, including how the food

products/ingredients are stored, the temperature control during transportation and storage of food products/ingredients, whether the food contact surfaces inside the machine are cleansed properly, etc. 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. It is especially important because the operation of vending machines is different from that of general food business. FEHD staff are usually unable to inspect the internal hygiene condition of machines on-site during routine inspection. 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

5.14 Given limited resources, a department can only intensify and strengthen regulatory control to a certain extent. Meanwhile, members of public should always be mindful of food safety for their own health. This Office, therefore, 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.

I. Displaying VP Permit on the Outside of Machines

5.15 FEHD requires all VM Permit applicants to prominently display their name, address and telephone number (if any) on the outside of machines for easy identification of their licensing status (see **para. 2.17**), but the information displayed does not include the VM Permit.

5.16 After the launch of this direct investigation, FEHD said that it would develop a thematic website about vending machines with information on its regulation over the sale of various food types by issuing VM Permits to operators. 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 thematic website mentioned above, 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.

II. Thermometer with Reading Displayed Externally

5.17 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. Unless the machines' doors were opened for measuring the temperature inside, there was no way for the public and FEHD staff to know the temperature at which the food was being stored in the machines (see **para. 4.12**).

5.18 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.

III. Improving the List of Permitted Premises

5.19 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 (see **para. 4.9**). 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

5.20 This Office notes that since the COVID-19 epidemic, some social welfare organisations in Hong Kong have been dispensing free food, frozen or in hot holding, by self-service machines to support people in need. FEHD explained that since provision of free food is not considered to be food business, those organisations need not apply to FEHD for food business licence or VM Permit for those self-service machines.

5.21 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

5.22 In the light of the above, The Ombudsman recommends that FEHD:

- (1) require VM Permit applicants to submit information about the devices and operation of vending machines and keep it in the case files (see **para. 5.4**);
- (2) update existing guidelines with instructions to staff on how to compile specific records of pre-approval inspection (see **para. 5.6**);
- (3) beef up the licensing conditions with clear and specific details on temperature control, machine cleansing and sterilisation, and record keeping (see **para. 5.7**);
- (4) explore stepping up random checks on permit holders' records of temperature control and machine cleansing and sterilisation as part of its monitoring work (see **para. 5.10**);
- (5) explore the feasibility of more proactive bacteriological testing of food and beverages sold by means of vending machine, thereby reinforcing licensing control (see **para. 5.13**);
- (6) step up publicity to raise public awareness of licensed vending machines and relevant licensing conditions (see **para. 5.14**);
- (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 (see **para. 5.16**);
- (8) require all vending machines of food under temperature control to be fitted with an externally readable thermometer or to provide relevant information (see **para. 5.18**);

- (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 (see **para. 5.19**); 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 (see **para. 5.21**).

ACKNOWLEDGEMENTS

5.23 The Ombudsman thanks FEHD for its full cooperation in the course of this investigation, and members of the public who are concerned about this topic for submitting their valuable opinions.

Office of The Ombudsman

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