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Onus should be on the police to get rid of unlicensed upstairs bars

(This paper is submitted to the meeting of district council of 28 Feb 2013. Some parts of this paper has been published in South China Morning Post and China Daily respectively)

Chan Wai-keung

Unlicensed upstairs bars have been proliferating in Hong Kong. Almost three years ago, the police raided two illegal pubs in Dundas street and arrested their operators for selling alcohol without licenses. It was initially an insignificant piece of news to the media. What later turned it into newsworthy was the police press release after the raid.

The police reiterated after these raids that it is illegal for the public to buy alcohol in unlicensed pubs. The drinkers, if convicted, will face a fine of 2000 HK dollars. This high-sounding police warning immediately drew the attention of Chinese media, sparked a controversy in legal field and caused a panic among drinkers.

In fact, the law against the purchase of alcohols in unlicensed bars has been less publicized to the public before. Members of the public probably do not know the list of licensed liquor premises on the homepage of the Liquor Licensing Board. As a result, most of the customers of the upstairs pubs are not aware of and knowledgeable about their legality. Enforcing this law would cause a public disquiet about the legal trap.

At the core of the controversy are the following questions: how can the drinkers tell whether or not the upstairs pubs they visited are unlicensed? When the illegal pubs can display fake licenses to earn customers' trust, how can immediately the public authenticate them? Will the pub operators be forthcoming in showing their legality to the customers? When it is not against the law to buy goods and foods from unlicensed hawkers in Hong Kong, what is the rationale behind convicting those buying alcohol in unlicensed pubs?

As the well-known lawyer Daniel Wong once pointed out, to prosecute the innocent drinkers unknowledgeable about the legality of upstairs bars and incapable of authenticating their licenses is utterly unfair and unreasonable. The onus to get rid of these illegal bars should be on the police, not on the drinkers.

Yet, the authorities over the past two years has failed to calm the controversy that has grown since they said that patrons could face a fine of HK\$2,000 if they were caught drinking in unlicensed bars. A jargon-filled



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police statement in response to public anxiety about the possible enforcement of the unpublicized law did little to clarify the rationale for prosecuting patrons of unlicensed pubs. "As a law enforcement agency, the police enforce what the law stipulates in accordance with the Dutiable Commodities Ordinance and the Dutiable Commodities (Liquor) Regulations," the police statement read. "Each case stands on its own facts and any prosecution will be evidence-based. Where necessary the Department of Justice will be approached for advice. In taking enforcement action against any unlicensed liquor premises, the police are committed to ensuring that public interests are protected."

The Food and Environmental Hygiene Department was not very instructive either when it came to explaining how customers could work out whether the bar they were drinking in was illegal. The department said: "According to Regulation 26A of the Dutiable Commodities (Liquor) Regulations, a person holding a liquor licence must display his full name and the nature and number of his licence in legible and permanent marking in letters and characters at least 75mm high in a conspicuous place on his licensed premises, whereas a person who is not the holder of a liquor licence is not allowed to do so..."

In my view, it is time for our lawmakers consider amending or scrapping the law against the purchase of alcohol in unlicensed bars in the near future. More importantly, to tackle the proliferation of unlicensed bars, I, as a district councillor, would instead suggest that the authorities should be much more committed to publicizing the list of licensed premises. To do so will benefit the public twofold: First, it will help the law-abiding drinkers shun the unlicensed bars. Second, it will enable the public to spot the illegal upstairs bars and give tip-offs to the police.

Summer holiday is approaching. Upstairs bars will be appealing to gullible youngsters for their cheap wine during this season. It is in unlicensed upstairs ones that they easily fall prey to drugs and prostitution. It is high time that the police combated the proliferation of illegal bars. Instead of pointing an accusing finger to innocent drinkers, the police should step up manpower to raid the unlicensed upstairs bars.

This paper is submitted to the meeting of District Council of 28 February 2013. I will be grateful if the District Commanders of Mong Kok and Yau Tsim at Hong Kong Police Force and the representatives of the Food and Environmental Hygiene Department can attend the meeting in response to my questions. Two news reports by a leading Chinese newspaper as well as my own commentary on this issue in South China Morning post is enclosed with this paper.

Chan Wai-keung
Yau Tsim Mong District Councillor



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東方日報

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拘 64 名男女 最小 15 歲

昨凌晨二時許，元朗反黑組聯同重案組、特遣隊及軍裝警員，帶同警犬突擊搜查宏業東街十八號宏業中心二樓，搗破一間無牌酒吧……

在場六十二名酒客涉嫌「在無領取牌照的地方飲酒罪」被捕，警方在現場檢獲一批啤酒及洋酒，總值約二萬五千元……

東方日報

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職員聲稱唔使擺牌

今年七月，本報記者親身視察又新街及福樂徑一帶的啤酒店，發現酒舖有酒賣有食物，更夜夜笙歌，職員於店外放枱椅，招呼客人坐下飲飲食食。記者佯裝顧客查詢有否酒牌時，職員大模廝樣稱：「我哋淨係賣酒！又有啲店內提供地方飲酒！咁樣係唔使拎酒牌！」職員更指於店外擺放枱椅「最多畀食環署告阻街！幾千蚊罰款當交租囉！」

過去數月，警方曾多次在元朗區掃蕩無牌酒吧……上月十七日，警方於元朗搗破一間涉嫌無牌提供場所供人飲酒的士多，當時於店內「打躉」飲酒的兩男兩女顧客，亦涉嫌「在並無領取牌照的地方飲酒」，罕有被警方拘捕，震驚全港酒客。



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Onus should be on police to get rid of unlicensed upstairs bars

Unlicensed upstairs bars are proliferating in Hong Kong. On April 23, the police raided two illegal pubs in Mong Kok and arrested their operators for selling alcohol without licences ("Pair arrested over illegal pubs", April 25).

Police reiterated after these raids that it is illegal for people to buy alcohol in unlicensed pubs, and that patrons could face a "fine of HK\$2,000 if convicted". These raids attracted the attention of the Chinese media, sparked a controversy in the legal sector and have caused panic among drinkers.

In fact, up till now there has been very little publicity about the consequences of drinking in unlicensed bars and there have been no prosecutions. Members of the public probably do not know about the list of licensed liquor premises on the homepage of the Liquor Licensing Board.

This controversy leads to a number of questions:

- How can drinkers tell whether or not the upstairs pubs they are visiting are unlicensed?
- When illegal pubs can display fake licences to win the trust of customers, how can people check their authenticity?

- Will pub operators be forthcoming to customers regarding the legality of their business? and
- Given that it is not against the law to buy goods and food from unlicensed hawkers, what is the rationale behind convicting those buying alcohol in unlicensed pubs?

As the respected lawyer Daniel Wong Kwok-tung pointed out on TV, it is unfair to prosecute drinkers who have no idea about the legal status of upstairs bars and cannot authenticate the licences. The onus should be on police to get rid of these illegal bars, not on drinkers to determine if the licence is bona fide.

It seems less likely that our lawmakers will amend or scrap the law against the purchase of alcohol in unlicensed bars in the near future. To tackle the abundance of unlicensed bars, I would suggest that the government should be much more committed to publicising the law and listing licensed premises. This will enable law-abiding drinkers to avoid unlicensed bars. It will also mean that, when ordinary citizens spot an illegal upstairs bar, they can tip off the police.

Chan Wai-keung, Yau Tsim Mong district councillor

(中文撮譯)

文件及附件剪報部分均為英文本，文件的中文標題及內容撮要由秘書處提供，釋義概以英文本為準。

掃蕩無牌樓上酒吧 警方責無旁貸

- 約三年前，警方在一次特擊行動中，搗破登打士街兩間無牌酒吧，警方新聞稿指市民在無牌酒吧買酒，實屬違法，一經定罪，可處罰款2,000元。警方此番高調警告市民，引起法律爭議和買醉者恐慌。
- 公眾未必知悉酒牌局網頁載列的持有酒牌處所名單，大部分樓上酒吧顧客不會知道，亦沒有足夠能力辨識該等酒吧是否合法經營，這形同法律陷阱，在此情況下執法，會引致公眾不安。
- 爭議之處在於以下問題：
 1. 買醉者如何分辨他們光顧的樓上酒吧是否持牌處所？
 2. 無牌酒吧可以展示偽造的酒牌，公眾如何可以立即識辨真偽？
 3. 酒吧經營者會否坦白告知顧客，其酒吧是否合法經營？
 4. 在香港，市民向無牌小販購買貨品和食物，不算違法，為何光顧無牌酒吧，反會定罪？
- 過去兩年，當局未有平息這些爭議，警方的聲明沒有闡釋控告光顧無牌酒吧人士的理據，而食物環境衛生署的回覆，亦無助市民識辨酒吧是否持牌經營。
- 立法者應考慮在短期內修訂或廢除檢控光顧無牌酒吧的法例。此外，當局應加強宣傳，公開持有酒牌處所名單，以廣周知。這樣可使守法的市民避免光顧無牌酒吧，亦可讓公眾識辨和向警方舉報無牌樓上酒吧。
- 暑假將至，樓上酒吧酒價低廉，會吸引不虞有詐的青少年光顧，而無牌樓上酒吧正是青少年每多濫用毒品和賣淫的場所，因此，警方打擊無牌酒吧滋長，刻不容緩。警方與其指控無辜的買酒人士，不如增派人手，掃蕩無牌樓上酒吧。