

LEGISLATIVE COUNCIL BRIEF

Public Health and Municipal Services Ordinance
(Chapter 132)

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) BILL 2001

INTRODUCTION

At the meeting of the Executive Council on 13 February 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that the Public Health and Municipal Services (Amendment) Bill 2001, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. To protect public health, all food establishments are required to operate with the appropriate licences, permits or permissions. Following the outbreak of several cholera and food poisoning cases in 1997 which involved unhygienic food establishments, there have been increasing calls from the community for the exercise of tighter control on food establishments, in particular unlicensed food establishments, to protect public health.

3. In 1998 and 1999, the former Provisional Municipal Councils ("the Councils") endorsed a proposal to amend the Ordinance to empower the Councils to close unlicensed food establishments which were not fit to be licensed on grounds of public health and structural and fire safety and to close food establishments which were operated under conditions that would pose a serious hazard to public health. Under the proposal, the Councils (or the then Director of Urban Services and Director of

Regional Services under delegated authority) would be empowered to close unlicensed and unhygienic food establishments without the need to apply for a court order.

Present Position

Unlicensed Food Establishments

4. The present closure process as provided for under the Ordinance is protracted and ineffective in dealing with unlicensed food establishments. As the licensing authority, the Food and Environmental Hygiene Department ("the Department") has, in the first instance, to prosecute the operator of an unlicensed food establishment by summons and secure a conviction before applying to the court for a Prohibition Order. The Department can apply for a closure order only if the Prohibition Order has been breached and the operator convicted. The whole process may take as long as nine months.

5. Unscrupulous operators take advantage of the time in between to operate small-scale and short-term food businesses on unlicensable premises. When a closure order is finally served, many would simply wind up the business and operate elsewhere. Others delay the closure process by changing the operator/proprietor of the food establishment or the type of food business. This makes it difficult for the Department to prove the breach of a Prohibition Order.

6. During the period between January and December 2000, the Department succeeded in applying for only one closure order out of 558 Prohibition Orders. Relevant statistics, including the number of unlicensed food establishments and the number of prosecutions taken against such establishments, are given at Annex B.

Unhygienic Food Establishments

7. To prevent the spread of infectious diseases, the Director of Health is empowered under sections 19 and 24 of the Prevention of the Spread of Infectious Diseases Regulation (Cap. 141 sub leg.) to isolate

and disinfect any premises including food establishments. However, that Regulation cannot be invoked to deal with food hygiene incidents caused by factors other than infectious diseases. Nor can it deal effectively with other cases where the hygiene conditions are so bad as to pose a serious or an immediate threat to public health and safety that immediate closure of the premises is called for.

8. The lack of power to close with immediate effect and to prohibit the use of such premises has undermined the Department's effort to ensure public health and safety.

The Proposal

9. Our proposal consists of two parts as set out below.

Closure of Unlicensed Food Establishments

10. To tackle the problem of unlicensed food establishments more effectively, we propose to add a new provision to the Ordinance to empower the Director of Food and Environmental Hygiene ("the Director") to make a direct application to the court for a closure order. The application will be based on the fact that the premises are operating without a licence, permit or permission. Under the proposed arrangement, applications for a closure order will no longer have to rely on evidence of breaches of a Prohibition Order. The time required to close an unlicensed food establishment is expected to be significantly reduced from nine months to one and half months. Unlicensable premises including flimsy structures being used for illegal slaughtering and roasting activities will be our immediate targets.

11. If the food establishment ceases to operate or an application for a licence, permit or permission has been made and all the requisite requirements are met, the closure order on the premises could be lifted through application to the court by the Director, the owner or the occupier concerned.

Closure of Unhygienic Food Establishments

12. To tighten the control on unhygienic food establishments, we propose to add a new provision to the Ordinance to empower the Director to close food establishments temporarily without recourse to court proceedings, on the ground of an immediate health hazard relating to food safety. If the Director has sufficient cause to believe that public health is under serious threat, she may order the immediate closure of the premises. The closure will enable all necessary investigations and the carrying out of cleansing, disinfestation, deratting, disinfection and other rectification measures to be taken immediately. The power will be exercised personally by the Director for the protection of food safety and public health on the advice of a medical officer. It will not be delegated. Any person who is aggrieved by the closure order imposed by the Director may within 7 days appeal to the court against the Director's decision.

13. The circumstances which may warrant an immediate closure include the following -

- (a) the location, construction or state of the premises, that renders any food on the premises so contaminated or tainted that it is unfit for human consumption;
- (b) the water used in preparing food or in washing utensils coming from a contaminated or unapproved source which renders any food prepared on the premises unfit for human consumption;
- (c) inspection findings including data from epidemiological investigation or other laboratory evidence show that any food supplied from or handled or sold on the premises is contaminated with either pathogens or chemical substances, thus rendering it unfit for human consumption; and
- (d) infestation of vermin to the extent that any food supplied from or handled or sold on the premises is contaminated or tainted and becomes unfit for human consumption.

14. The closure order will remain in force until the Director is satisfied that the health hazard on the premises has been eliminated and

the use of the premises has been licensed or permitted; or it can be proved to the satisfaction of the Director that the premises would not be used as a food establishment. Any person aggrieved by the decision of the Director of not rescinding the order may appeal to the court.

THE BILL

15. The main provisions of the Bill are -

- a) **Clause 3** adds the following new sections to the Ordinance -
 - (i) **S.128A** provides for the application of the newly added sections and defines the terms used in the new sections.
 - (ii) **S. 128B** empowers the court to close food establishments without the requisite licenses, permits or permissions on proof that the premises concerned are being used for carrying out food related business without a valid permit or licence and provides the procedures for rescinding the closure order.
 - (iii) **S. 128C** empowers the Director to close unhygienic food establishments that pose an immediate health hazard to the public and provides the procedures for rescinding the closure order. It also provides that any person aggrieved by the decision of the Director to make or not to rescind a closure order may appeal to the court.
- b) **Clauses 4 and 5** amend the **Third Schedule** and the **Sixth Schedule** to the Ordinance to designate the Director as the Authority for the new sections **128B** and **128C** and to provide that the Director may bring proceedings for offences under the new sections.
- c) **Clause 6** provides for forms to be used.
- d) **Clause 7** amends the **Ninth Schedule** to specify the penalty for offences under the new sections.
- e) **Clause 8** preserves the liability for offences committed under

section 128 and the power to prosecute for continuing offences committed under the same section, which has been amended by this Bill, and ensures that the Bill would not affect the validity of closure orders issued under the amended section before the commencement of the Bill.

PUBLIC CONSULTATION

16. In December 2000, we consulted the Advisory Council on Food and Environmental Hygiene and the trade on our proposal. The response was generally positive. The trade stressed that the use of the new power to close unlicensed food establishments must be supported by the efficient processing of licence applications and that the power of the Director in effecting an immediate closure of unhygienic food premises must be exercised with great care to prevent any unnecessary disruption to the normal operation of the trade.

17. We consulted the Legislative Council Panel on Food Safety and Environmental Hygiene in January 2001. Members also supported the proposals and urged Government to proceed with the legislative amendments as soon as possible.

BASIC LAW IMPLICATIONS

18. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

19. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

20. The Bill does not contain any express binding effect provision.

FINANCIAL AND STAFFING IMPLICATION

21. The Bill does not have any staffing and financial implications.

LEGISLATIVE TIMETABLE

22. The legislative timetable is -

Publication in the Gazette	16 February 2001
First Reading and commencement of Second Reading debate	28 February 2001
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

23. A press release will be issued on 14 February. A spokesman will be available for answering press enquiries.

ENQUIRIES

24. Enquiries concerning the Bill may be directed to Ms Eva TO, Principal Assistant Secretary for the Environment and Food at 2136 3333.

Environment and Food Bureau

14 February 2001

Public Health and Municipal Services Ordinance
(Chapter 132)

**PUBLIC HEALTH
AND MUNICIPAL SERVICES (AMENDMENT) BILL 2001**

ANNEXES

- Annex A - Public Health and Municipal Services (Amendment) Bill 2001
- Annex B - Figures on Unlicensed/Unpermitted Food Establishment
- Annex C - Existing provisions of the Public Health and Municipal Services Ordinance (Cap 132) being amended

Annex A

**PUBLIC HEALTH AND MUNICIPAL SERVICES
(AMENDMENT) BILL 2001**

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A BILL

To

Amend the Public Health and Municipal Services Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Public Health and Municipal Services (Amendment) Ordinance 2001.

2. Power to close premises used in contravention of provisions of Ordinance

Section 128 of the Public Health and Municipal Services Ordinance (Cap. 132) is amended -

- (a) in subsection (1), by repealing "Where" and substituting "Subject to subsection (1B), where";
- (b) by adding -

"(1B) This section does not apply to any premises to which sections 128A, 128B and 128C apply."

3. Sections added

The following are added -

"128A. Application and interpretation of this section and sections 128B and 128C

- (1) This section, sections 128B and 128C apply to -
 - (a) any premises used as food premises that are required to be licensed under the Food Business Regulation (Cap. 132 sub. leg.);

- (b) any premises on or from which any restricted food specified in Schedule 2 to the Food Business Regulation (Cap. 132 sub. leg.) is sold or offered or exposed for sale;
- (c) any premises used as a slaughterhouse that is required to be licensed under the Slaughterhouses Regulation (Cap. 132 sub. leg.);
- (d) any premises on which there is carried on a business as a milk factory as mentioned in regulation 14(2) of the Milk Regulation (Cap. 132 sub. leg.);
- (e) any premises on which any frozen confection as defined in section 3 of the Frozen Confections Regulation (Cap. 132 sub. leg.) is manufactured.

(2) For the purposes of this section, sections 128B and 128C, unless the context otherwise requires -

"closed premises" (已封處所) means any premises mentioned in subsection (1) in respect of which a closure order has come into force and remains in force;

"closure order" (封閉令) means an order made under section 128B(1) or 128C(1), as the case may be;

"immediate health hazard" (對健康的即時危害) means any circumstances that cause or are likely to cause any food supplied from or handled or sold on any premises to be or to become a source of food-borne infection, contamination, intoxication or disease transmission;

"premises" (處所) includes any place, vessel and any part of a place or vessel.

(3) The circumstances referred to in the definition of "immediate health hazard" include the following -

- (a) because of the location, construction or state of the premises, the condition of the premises is such that it renders any food supplied from or handled or sold on the premises so contaminated or tainted that it is unfit for human consumption;
- (b) the water used in preparing food or in washing utensils comes from a contaminated or unapproved source, rendering any food supplied from or handled or sold on the premises to be unfit for human consumption;
- (c) as shown from inspection findings, data from epidemiological investigation or other laboratory evidence, any food supplied from or handled or sold on the premises is contaminated with pathogens, biotoxins, chemicals or other substances rendering the food unfit for human consumption; and
- (d) the premises are infested with vermin to such extent that any food supplied from or handled or sold on the premises is contaminated or tainted, and becomes unfit for human consumption.

128B. Power to close premises used without licence, permit or permission

(1) Where under the Food Business Regulation (Cap. 132 sub. leg.), the Frozen Confections Regulation (Cap. 132 sub. leg.), the Milk Regulation (Cap. 132 sub. leg.) or the Slaughterhouses Regulation (Cap. 132 sub. leg.) -

- (a) the use of any premises to which this section applies; or
- (b) any activity mentioned in section 128A(1),

is required to be permitted or licensed, a court on application by the Authority and on proof that the premises are so used or the activity is conducted (as the case may be) on any premises without the requisite licence, permit or permission shall, subject to subsection (2), make a closure order in Form H in the Seventh Schedule.

- (2) The court shall not make a closure order unless it is satisfied that -
- (a) a notice of intention to apply for the closure order, in both English and Chinese, was affixed at a conspicuous place on the premises at least 7 days before the date fixed for the hearing of the application;
 - (b) the notice stated the time and place set for the hearing of the application and advised that any person having a reasonable cause to be heard on the application was entitled to appear at the hearing and request to be heard; and
 - (c) every person having a reasonable cause to be heard on the application and requesting to be heard has had an opportunity to be heard.

(3) At the time and place set for the hearing of the application or such other time as soon as practicable thereafter, the court shall hear the applicant and every person who -

- (a) is present at the hearing;
- (b) has a reasonable cause to be heard; and
- (c) wishes to be heard,

and then proceed to make a decision.

- (4) A closure order shall not operate to -
- (a) prevent human habitation on the premises other than habitation by a servant, watchman or caretaker

employed by the person having the management or control of the premises immediately before the order is affixed on the premises under subsection (5);

- (b) affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.

(5) A closure order comes into force on the beginning of the 8th day after the day on which a copy of it is affixed at a conspicuous place on the premises in respect of which it is made.

(6) A closure order shall remain in force until the court rescinds it on application by the Authority or any person having an interest in the premises in respect of which the order is made.

(7) The court shall rescind a closure order if it is satisfied that -

- (a) the use of the premises or the activity in respect of which the order has been made has been permitted or licensed under any of the subsidiary legislation mentioned in subsection (1); or
- (b) the premises will not be used for any purpose mentioned in section 128A(1) and no activity mentioned in subsection (1) will be conducted on the premises in contravention of any of the subsidiary legislation mentioned in subsection (1).

(8) Subject to subsection (4), when a closure order in respect of any premises comes into force, the Authority shall lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the premises and may disconnect or cause to be disconnected all gas, water and electricity supplies to those premises.

(9) Subject to subsection (10), no person, other than a public officer in the course of his duty, may enter or remain on any closed premises.

- (10) The Authority may -
- (a) permit in writing any person to enter and remain on any closed premises for such purpose as is specified in the permission;
 - (b) impose such conditions on the permission as he thinks fit;
 - (c) revoke the permission if he thinks that the purpose for which the permission was granted no longer exists or any condition imposed under paragraph (b) has been breached;
 - (d) request any person found on any closed premises to leave the premises, and if the person refuses to leave, remove the person from the premises with or without the assistance of police officers and use such force as is reasonably necessary.
- (11) Any person who, without lawful authority or reasonable excuse -
- (a) removes or defaces any copy of a closure order affixed under subsection (5);
 - (b) breaks or interferes with any lock or seal made under subsection (8); or
 - (c) contravenes subsection (9),

commits an offence.

- (12) The Authority may -
- (a) dispose of -
 - (i) any perishable food or any article or thing found on any closed premises that requires to be immediately disposed of as he thinks fit;
 - (ii) any live animal, bird or fish that is found on the premises as he thinks fit;

- (b) remove -
 - (i) any food, article or thing found on any closed premises that is likely to create a fire hazard or constitute a danger to life or health if left on the premises;
 - (ii) any live animal, bird or fish found on the premises;
 - (c) make such arrangements with regard to any live animal, bird or fish removed under paragraph (b) as he thinks fit;
 - (d) affix a notice in both English and Chinese at a conspicuous place on the closed premises -
 - (i) setting out the details of any food, article, thing, live animal, bird or fish removed under paragraph (b) that he thinks can be returned; and
 - (ii) calling for the submission to him of any claim for the return of such food, article, thing, live animal, bird or fish within 7 days of the affixing of the notice.
- (13) Where a claim mentioned in subsection (12)(d)(ii) is made, the Authority -
- (a) shall refuse to return the food, article, thing, live animal, bird or fish if he is not satisfied that the claimant is either the owner or a person entitled to the possession of it or the live animal, bird or fish is dead; or
 - (b) may return the food, article, thing, live animal, bird or fish as claimed and recover as a civil debt from a claimant to whom it is returned any expenses

incurred in the removal and storage of it or removal and attendance to it.

(14) Any food, article, thing, live animal, bird or fish removed by the Authority under subsection (12)(b) and not claimed within the time specified in subsection (12)(d)(ii), or which the Authority refuses to return in accordance with subsection (13)(a), may be sold by public auction or, upon the order of a court, otherwise sold or disposed of as the court directs, and any proceeds arising from the sale shall be retained by the Authority and applied in payment of any expenses incurred in connection with the enforcement of the closure order and the surplus (if any) paid, on demand made within 90 days of the sale, to the owner of the food, article, thing, live animal, bird or fish.

(15) Any surplus not demanded in accordance with subsection (14) shall be paid into the general revenue.

(16) The Authority may recover as a civil debt from the person having the management or control of any premises (or the master of the vessel if the premises are a vessel or any part of a vessel) immediately before the closure order in respect of the premises came into force the cost of -

- (a) any work carried out on the premises under subsection (8);
- (b) removing any food, article, thing, live animal, bird or fish from the closed premises under subsection (12)(b); and
- (c) any arrangements made under subsection (12)(c),

which is not met out of the proceeds of any sale under subsection (14).

128C. Power to close premises posing immediate health hazard

(1) If the Authority has reasonable cause to believe that the use of any premises to which this section applies or any activity conducted on those premises to which this section applies poses an immediate health hazard, he may make a closure order in Form I in the Seventh Schedule to close the premises immediately.

(2) A closure order shall not operate to -

(a) prevent human habitation on the premises other than habitation by a servant, watchman or caretaker employed by the person having the management or control of the premises immediately before the order comes into force;

(b) affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.

(3) A closure order comes into force immediately after a copy of it is affixed at a conspicuous place on the premises in respect of which it is made.

(4) A closure order shall remain in force until a notice is issued by the Authority made under subsection (6).

(5) Any person having an interest in any premises in respect of which a closure order has been made may apply in writing to the Authority to rescind the order.

(6) Whether or not an application has been made under subsection (5), if the Authority is satisfied that -

(a) in respect of any premises in respect of which a closure order has been made, the immediate health hazard has been eliminated and the use of the premises or the activity to be conducted on the

premises has been permitted or licensed under any of the subsidiary legislation mentioned in section 128B(1); or

- (b) the premises will not be used for any purpose mentioned in section 128A(1) or no activity mentioned in section 128A(1) will be conducted on the premises in contravention of any of the subsidiary legislation mentioned in section 128A(1),

the Authority shall issue a notice in Form J in the Seventh Schedule to rescind the closure order with immediate effect.

(7) If the Authority refuses to issue a notice under subsection (6) as applied, he shall serve a notice of his refusal on the applicant and the applicant may, within 7 days of such service or such longer time as the court may allow, appeal to the court against the Authority's decision.

(8) On an appeal under subsection (7) the court shall either confirm the Authority's decision or order the Authority to issue a notice under subsection (6).

(9) The lodging of an appeal under subsection (7) does not operate as a stay of execution of a closure order unless the court otherwise orders.

(10) The decision of the court under subsection (8) is final.

(11) Subject to subsection (2), when a closure order in respect of any premises comes into force, the Authority shall lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the closed premises and may disconnect or cause to be disconnected all gas, water and electricity supplies to those premises.

(12) Subject to subsection (13), no person, other than a public officer in the course of his duty, may enter or remain on any closed premises.

(13) The Authority may -

- (a) permit in writing any person to enter and remain on any closed premises for such purpose as is specified in the permission;
 - (b) impose such conditions on the permission as he thinks fit;
 - (c) revoke the permission if he thinks that the purpose for which the permission was granted no longer exists or any condition imposed under paragraph (b) has been breached;
 - (d) request any person found on any closed premises to leave the premises, and if the person refuses to leave, remove the person from the premises with or without the assistance of police officers and use such force as is reasonably necessary.
- (14) Any person who, without lawful authority or reasonable excuse -
- (a) removes or defaces any copy of a closure order affixed under subsection (3);
 - (b) breaks or interferes with any lock or seal made under subsection (11); or
 - (c) contravenes subsection (12),

commits an offence.

- (15) The Authority may -
- (a) dispose of -
 - (i) any perishable food or any article or thing found on any closed premises that requires to be immediately disposed of as he thinks fit;
 - (ii) any live animal, bird or fish found on the premises as he thinks fit;
 - (b) remove -

- (i) any food, article or thing found on any closed premises that is likely to create a fire hazard or constitute a danger to life or health if left on them;
 - (ii) any live animal, bird or fish found on the premises;
 - (c) make such arrangements with regard to any live animal, bird or fish removed under paragraph (b) as he thinks fit;
 - (d) affix a notice in both English and Chinese at a conspicuous place on the closed premises -
 - (i) setting out the details of any food, article, thing, live animal, bird or fish removed under paragraph (b) that he thinks can be returned; and
 - (ii) calling for the submission to him of any claim for the return of such food, article, thing, live animal, bird or fish within 7 days of the affixing of the notice.
- (16) Where a claim mentioned in subsection (15)(d)(ii) is made, the Authority -
- (a) shall refuse to return the food, article, thing, live animal, bird or fish if he is not satisfied that the claimant is either the owner or a person entitled to the possession of it or the live animal, bird or fish is dead; or
 - (b) may return the food, article, thing, live animal, bird or fish as claimed and recover as a civil debt from a claimant to whom it is returned any expenses

incurred in the removal or storage of it or removal and attendance to it.

(17) Any food, article, thing, live animal, bird or fish removed by the Authority under subsection (15)(b) and not claimed within the time specified in subsection (15)(d)(ii), or which the Authority refuses to return in accordance with subsection (16)(a), may be sold by public auction or, upon the order of a court, otherwise sold or disposed of as the court directs, and any proceeds arising from the sale shall be retained by the Authority and applied in payment of any expenses incurred in connection with the enforcement of the closure order and the surplus (if any) paid, on demand made within 90 days of the sale, to the owner of the food, article, thing, live animal, bird or fish.

(18) Any surplus not demanded in accordance with subsection (17) shall be paid into the general revenue.

(19) The Authority may recover as a civil debt from the person having the management or control of any premises (or the master of the vessel if the premises are a vessel) immediately before the closure order in respect of the premises came into force the cost of -

- (a) any work carried out on the premises under subsection (11);
- (b) removing any food, article, thing, live animal, bird or fish from the closed premises under subsection (15)(b); and
- (c) any arrangements made under subsection (15)(c),

which is not met out of the proceeds of any sale under subsection (17).

(20) A person who is aggrieved by an order made under subsection (1) may, within 7 days after the day on which the order was made or such longer time as the court may allow, appeal to the court against the Authority's decision.

(21) On an appeal made under subsection (20) the court may confirm, suspend or disallow the order.

(22) The lodging of an appeal under subsection (20) does not operate as a stay of execution of a closure order unless the court otherwise orders.

(23) The decision of the court under subsection (21) is final."

4. Designated Authorities

The Third Schedule is amended by adding -

"128B	Director of Food and Environmental Hygiene
128C	Director of Food and Environmental Hygiene".

5. Names in which proceedings for offences may be brought under section 131(1)

The Sixth Schedule is amended by adding -

"128B	Director of Food and Environmental Hygiene
128C	Director of Food and Environmental Hygiene".

6. Forms

The Seventh Schedule is amended by adding -

"FORM H

[s. 128B(1)]

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE

(Chapter 132)

(section 128B(1))

Closure Order

TO the Director of Food and Environmental Hygiene.

You have applied to me for a closure order in respect of the premises situated at /vessel..... * on the ground that the premises are/vessel is* used/certain activity is conducted on the premises/in the vessel* without a licence, permit or permission under the Public Health and Municipal Services Ordinance (Cap. 132) ("the Ordinance"):

NOW on proof to my satisfaction of this ground and that a notice of intention to apply for this order was affixed at a conspicuous place on the premises/vessel* as required by section 128B(2) of the Ordinance, I DO, in exercise of my powers under section 128B(1) of the Ordinance, authorize you, subject to the requirement of section 128B(5) of the Ordinance, to close the premises/vessel* in the manner prescribed by the Ordinance.

Dated this.....day of.....,..... [L. S.]

(Signed)
Magistrate.

- Note: 1. It is an offence for any unauthorized person to enter or remain on the premises/in the vessel* to which this order relates after it has come into force. The penalties are a fine at level 6 and imprisonment for 12 months and a fine of \$1,750 for each day during which the offence continues.
2. The penalties for removing or defacing a copy of this order affixed to any premises/vessel* or for breaking or interfering with any lock or seal made or caused to be made by the Director on the premises/in the vessel* without permission are a fine at level 4 and imprisonment for 6 months.

* Delete as appropriate.

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE

(Chapter 132)

(section 128C(1))

Closure Order

TO the occupier of the premises situated at
..... /master of the vessel.....
.....

NOW on proof to my satisfaction that an immediate health hazard exists on the premises/in the vessel/in of the vessel*, I DO, in exercise of my powers under section 128C(1) of the Public Health and Municipal Services Ordinance (Cap. 132) ("the Ordinance"), order to close the premises/vessel/that part of the vessel* with immediate effect in the manner prescribed by the Ordinance.

The details of the immediate health hazard are:

This order remains in force until a notice to rescind it is issued by me upon proof to my satisfaction that -

- (a) the immediate health hazard on the premises/in the vessel/in that part of the vessel* has been eliminated and the use of

the premises/vessel/that part of the vessel* has been licensed or permitted; or

- (b) the premises/vessel/that part of the vessel* will not be used for a purpose that requires a licence, permit or permission under any subsidiary legislation mentioned in section 128A(1) and no activity mentioned in that section will be conducted on the premises*.

Any person who feels aggrieved by this order may, within 7 days after the day on which this order was made or such longer time as the court may allow, appeal to the court to seek legal remedy.

Dated this.....day of.....,

(Signed).....

Director of Food and Environmental Hygiene.

- Note:
1. It is an offence for any unauthorized person to enter or remain on the premises/in the vessel* to which this order relates after it has come into force. The penalties are a fine at level 6 and imprisonment for 12 months and a fine of \$1,750 for each day during which the offence continues.
 2. The penalties for removing or defacing a copy of this order affixed to any premises/vessel* or for breaking or interfering with any lock or seal made or caused to be made by the Director on the premises/in the vessel* without

permission are a fine at level 4 and imprisonment for 6 months.

* Delete as appropriate.

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE

(Chapter 132)

(section 128C(6))

Notice of Rescission of Closure Order

TO the occupier of the premises situated at
..... /master of the
vessel.....

NOW on proof to my satisfaction that -

- (a) the immediate health hazard on the premises/in the vessel/in the of the vessel* has been eliminated and the use of/activity conducted on* the premises/vessel/that part of the vessel* has been licensed or permitted; or
- (b) the premises/vessel/that part of the vessel* will not be used for a purpose that requires a licence, permit or permission under any subsidiary legislation mentioned in section 128A(1) and no activity mentioned in that section will be conducted on the premises*.

I DO, in exercise of my powers under section 128C(6) of the Public Health and Municipal Services Ordinance (Cap. 132), rescind the closure order in respect of the premises/vessel/that part of the vessel* with immediate effect.

Dated this.....day of.....,

(Signed).....

Director of Food and Environmental Hygiene.

* Delete as appropriate."

7. Penalties

The Ninth Schedule is amended by adding -

"128B(11)(c) and 128C(14)(c)	level 6 and 12 months imprisonment	\$1,750 fine
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128B(11)(a) and (b) and 128C(14)(a) and (b)	level 4 and 6 months imprisonment".	-
--	--	---

8. Transitional

(1) Any proceedings in respect of any offence under section 128 of the Public Health and Municipal Services Ordinance (Cap. 132) committed or alleged to have been committed immediately before the commencement of the Public Health and Municipal Services (Amendment) Ordinance 2001 (of 2001) ("the amending Ordinance") may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the amending Ordinance had not been enacted.

(2) Nothing in the amending Ordinance affects the validity of a Closure Order issued under section 128 of the Public Health and Municipal Services Ordinance (Cap. 132) before the commencement of the amending Ordinance.

Explanatory Memorandum

The object of this Bill is to amend the Public Health and Municipal Services Ordinance (Cap. 132) ("the principal Ordinance") to provide for -

- (a) the making of closure orders in respect of premises used for certain food business purposes without licence, permit or permission;
 - (b) an expedited procedure to make closure orders where the use of premises for certain food business purposes constitutes an immediate health hazard.
2. Clause 1 contains the short title of the Bill.
 3. Clause 2 amends section 128 of the principal Ordinance to provide that that section shall not apply to premises to which this Ordinance applies.
 4. Clause 3 adds 3 new sections to the principal Ordinance -
 - (a) new section 128A defines the application of the new sections and contains certain definitions of expressions used in those sections;
 - (b) new section 128B provides that where premises are used for certain food business purposes without the requisite licence, permit or permission, the court may, on the application of the Director of Food and Environmental Hygiene ("the Director"), make a closure order in respect of the premises. It also lays down the conditions and procedure leading to the making and rescission of a closure order, the powers of the Director and the disposal of things found on closed premises. This new section

also makes it an offence for any person who, without lawful authority or reasonable excuse, enters or remains on closed premises, breaks a lock or seal made to closed premises or removes or defaces any copy of a closure order affixed at closed premises;

- (c) new section 128C empowers the Director to make an immediate closure order in respect of any premises the use of which for certain food business purposes constitutes an immediate health hazard. It also contains administrative and penal provisions similar to those of new section 128B. It also provides for appeal to the court against the Authority's decision.

5. Clause 4 amends the Third Schedule to the principal Ordinance to designate the Director as the Authority for the purpose of new sections 128B and 128C.

6. Clause 5 amends the Sixth Schedule to the principal Ordinance to enable proceedings for offences under new sections 128B and 128C to be brought in the name of the Director.

7. Clause 6 adds the necessary forms for the purposes of new sections 128B and 128C.

8. Clause 7 specifies the penalties for offences under the new sections.

9. Clause 8 contains 2 transitional provisions.

Figures on Unlicensed/Unpermitted Food Establishment

(1.1.2000 - 31.12.2000)

(a)	Estimated number of unlicensed food establishments under application for licence as at 31.12.2000	310
(b)	Estimated number of unpermitted food establishment under application for permit as at 31.12.2000	4
(c)	Estimated number of unlicensed food establishments not under application for licence as at 31.12.2000	208
(d)	Estimated number of unpermitted food establishments not under application for permit as at 31.12.2000	2
(e)	Number of Prohibition Orders granted	558
(f)	Number of closure Orders granted	1
(g)	Number of prosecutions for breach of Food Business Regulation (carrying on a food business without a licence or permit)	4228
(h)	Number of applications to the Court for a Prohibition Order	704
(i)	Number of prosecutions for breach of Prohibition Order	541

Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section:	128	Heading:	Power to close premises used in contravention of provisions of Ordinance	Version Date:	01/01/2000

(1) Where under this Ordinance, the use of any premises or vessel are or is required to be registered, licensed or permitted, the court on application by the public officer authorized to register, license or permit such use and on proof that-

- (a) the premises or vessel are or is used without registration, license or permit;
- (b) the premises or vessel have or has been used without registration, licence or permit and there is reasonable cause to believe that they or it will be so used again; or
- (c) the premises or vessel are or is used in contravention of a suspension of the registration, licence or permit or any provision of this Ordinance,

shall, subject to subsection (5), make an order in Form F in the Seventh Schedule ("Prohibition Order") prohibiting the use of the premises or vessel or a specified part of the premises or vessel ("specified part"), for all purposes or, for a purpose specified in the order, with effect from the 8th day after copies of the order have been served under subsection (6): (Replaced 78 of 1999 s. 7)

Provided that, where, at the date of the issue of a summons in respect of an application under this subsection, the premises or vessel are or is used for the purpose of human habitation, no such order shall be made so as to prevent such habitation by reason only of the user being without registration, licence or permit or in contravention of any of the requirements thereof or any suspension thereof. (Amended 61 of 1974 s. 11)

(1A) For the purposes of subsection (1), human habitation of premises or a vessel does not include habitation by a servant, watchman or caretaker employed by the person having the management or control of such premises or vessel. (Added 61 of 1974 s. 11)

(2) Any order made under the provisions of subsection (1) shall remain in force in respect of such premises or vessel until, on application by such public officer or by any person having an interest in such premises or vessel, the court is satisfied that either the use of such premises or vessel has been registered, licensed or permitted or such suspension has been cancelled or the provisions of this Ordinance have been complied with, as the case may be, or that such premises or vessel will be used in future for some other purpose.

(3) Any person who contravenes any order of the court made under the provisions of subsection (1) shall be guilty of an offence.

(4) Where a Prohibition Order in respect of premises, a vessel or a specified part to which regulations made under section 56 apply has been served under subsection (6) but has not been continuously complied with from the 8th day after such service, the court, upon application by the public officer upon whose application the order was made shall, without prejudice to any penalty which may be imposed under this section, but subject to subsection (5), make an order in Form G in the Seventh Schedule (in this section referred to as a "Closure Order"). (Added 76 of 1988 s. 3)

(5) A court shall not make a Prohibition Order or a Closure Order unless satisfied-

- (a) that at least 14 days' notice of intention to apply for the order has been served under subsection (6);
- (b) that such notice stated the time and place set for the hearing of the application and advised that any person having reasonable cause to be heard upon the application might request to be so heard; and
- (c) that every person having reasonable cause to be heard upon the application and requesting to be so has had an opportunity to be heard. (Added 76 of 1988 s. 3)

(6) Notice of intention to apply for a Prohibition Order or Closure Order in respect of any premises, vessel or specified part, and a copy of every such order when made, shall be in both English and Chinese and shall be served by affixing it to a conspicuous part of those premises, that vessel or that

specified part. (Added 76 of 1988 s. 3)

(7) A Closure Order made in respect of any premises, vessel or specified part shall come into force on the 8th day after it has been served under subsection (6) and shall remain in force for as long as the Prohibition Order made in respect of those premises, that vessel or that specified part remains in force. (Added 76 of 1988 s. 3)

(8) Upon the coming into force of a Closure Order in respect of any premises, vessel or specified part, the public officer upon whose application the order was made shall lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the premises, vessel or specified part and may disconnect or cause to be disconnected all gas, water and electricity supplies thereto. (Added 76 of 1988 s. 3)

- (9) While a Closure Order is in force in respect of any premises, vessel or specified part-
- (a) no person, except with the written permission of the public officer upon whose application the order was made, shall enter or remain in those premises, on that vessel or in or on that specified part;
 - (b) a person carrying written authority from the public officer to whom the order was directed may remove from the premises, vessel or specified part any person who fails to comply with paragraph (a), and in doing so may, with such assistance from police officers as may be necessary, use such force as is reasonably necessary. (Added 76 of 1988 s. 3)

- (10) Any person who, without lawful authority or excuse-
- (a) enters or remains in any premises, on any vessel or in or on any specified part in contravention of subsection (9)(a);
 - (b) breaks or interferes with any lock or seal placed on any premises, vessel or specified part under subsection (8); or
 - (c) removes or defaces a document affixed to any premises, vessel or specified part for the purposes of this section,

shall be guilty of an offence. (Added 76 of 1988 s. 3)

(11) Where, immediately before any premises, vessel or specified part are or is closed under subsection (8), there is found therein or thereon any food, or any article or thing likely to create a fire hazard or constitute a danger to life or health if left in or on the premises, vessel or specified part, the public officer upon whose application the Closure Order was made shall-

- (a) take possession of such food, article or thing;
- (b) dispose as he thinks fit of any perishable food and of any article or thing which requires to be immediately disposed of; and
- (c) affix a notice in both English and Chinese to a conspicuous part of the premises, vessel or specified part setting out details of any food, article or thing still in his possession and calling upon persons to submit any claim for the return of such food, article or thing within 7 days after the day on which the notice was posted. (Added 76 of 1988 s. 3)

(12) Where a claim is made under subsection (11)(c) for the return of any food, article or thing, the public officer in possession thereof may-

- (a) refuse to return it unless satisfied that the claimant is the owner or otherwise entitled to possession of the food, article or thing; and
- (b) recover as a civil debt from a claimant to whom any food, article or thing is returned, any expenses incurred in the removal and storage of such food, article or thing. (Added 76 of 1988 s. 3)

(13) Any food, article or thing taken into the possession of a public officer under subsection (11)(a) and not claimed within the time referred to in subsection (11)(c), or which the public officer refuses to return in accordance with subsection (12)(a), may be sold by public auction or, upon the order of a magistrate, otherwise sold or disposed of as the court thinks fit, and the money arising from the sale thereof shall be retained by the public officer and applied in payment of expenses incurred in connection with the enforcement of the Closure Order and the surplus (if any) paid, on demand, to the owner of the food, article or thing. (Added 76 of 1988 s. 3)

(14) A public officer upon whose application a Closure Order is made in respect of any premises,

vessel or specified part may recover as a civil debt from the occupier of the premises, master of the vessel, or occupier of the specified part the cost of any work carried out under subsection (8) and of taking possession of any food, article or thing under subsection (11) which is not met out of the proceeds of any sale under subsection (13). (Added 76 of 1988 s. 3)

(15) An order made under subsection (1) before 1 October 1988 and in force on that date shall remain in force after that date subject to subsection (2). (76 of 1988 s. 8(1) incorporated)

(16) If an order made under subsection (1) before 1 October 1988-

(a) is in respect of premises, a vessel or a specified part to which regulations made under section 56 apply;

(b) is served on or after 1 October 1988 under subsection (6) as added by the Public Health and Municipal Services (Amendment) (No. 2) Ordinance 1988 (76 of 1988); and

(c) has not been continuously complied with from the 8th day after such service, the public officer or public body upon whose application the order was made may apply for a Closure Order to be made in respect of those premises, that vessel or that specified part under subsection (4) as added by that Ordinance, whereupon the provisions of subsections (5) to (14) as so added shall apply. (76 of 1988 s. 8(2) incorporated)

(Amended 78 of 1999 s. 7)

Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section:	3	Heading:	DESIGNATED AUTHORITIES	Version Date:	01/01/2000

[section 3]

Section	Designated Authorities
4	Director of Drainage Services
5	Director of Drainage Services
6	Director of Drainage Services
7	Director of Drainage Services
9	Director of Drainage Services
10	Director of Drainage Services
13	Director of Food and Environmental Hygiene
14	Director of Food and Environmental Hygiene
15	Secretary for the Environment and Food
20	Director of Food and Environmental Hygiene
22	Director of Food and Environmental Hygiene
22A	Director of Food and Environmental Hygiene
23	Director of Food and Environmental Hygiene
23A	Director of Food and Environmental Hygiene
24	Director of Food and Environmental Hygiene
26	Secretary for the Environment and Food
27	Director of Food and Environmental Hygiene
28	Secretary for the Environment and Food
29	Secretary for the Environment and Food
30	Director of Food and Environmental Hygiene

32 Director of Food and Environmental Hygiene
33 Director of Food and Environmental Hygiene
34 Director of Food and Environmental Hygiene
35 Secretary for the Environment and Food
36 Director of Food and Environmental Hygiene
37 Director of Food and Environmental Hygiene
38 Director of Food and Environmental Hygiene
42 Secretary for Home Affairs in respect of public swimming pools and the Secretary for the Environment and Food in respect of other swimming pools
42A Director of Leisure and Cultural Services
42B Director of Leisure and Cultural Services
43 Director of Leisure and Cultural Services
44 Director of Leisure and Cultural Services
46 Director of Food and Environmental Hygiene
47 Director of Food and Environmental Hygiene
48 Director of Food and Environmental Hygiene
49 Secretary for the Environment and Food
51A Director of Food and Environmental Hygiene
56 Director of Food and Environmental Hygiene, but in respect of drugs, Director of Health
56A Director of Health
58 Director of Food and Environmental Hygiene, but in respect of drugs, Director of Health
59 Director of Food and Environmental Hygiene, but in respect of drugs, Director of Health
62 Director of Food and Environmental Hygiene, but in respect of drugs, Director of Health
69 Director of Food and Environmental Hygiene, but in respect of drugs, Director of Health
70 Director of Food and Environmental Hygiene, but in respect of drugs, Director of Health
75 Director of Food and Environmental Hygiene, but in respect of drugs, Director of Health
76A Director of Food and Environmental Hygiene
76B Director of Food and Environmental Hygiene
77 Secretary for the Environment and Food
78 Director of Food and Environmental Hygiene
79(1), (3) Director of Food and Environmental Hygiene
and (5)
79A Director of Food and Environmental Hygiene
80 Secretary for the Environment and Food
81 Director of Food and Environmental Hygiene
82 Director of Food and Environmental Hygiene
83A Secretary for the Environment and Food, but the Director of Food and Environmental Hygiene for section 83A(1)(g) and (i)
83B Director of Food and Environmental Hygiene
84 Director of Food and Environmental Hygiene
86 Director of Food and Environmental Hygiene
86B Director of Food and Environmental Hygiene
92A Director of Leisure and Cultural Services
92AA Secretary for Home Affairs
92AB Director of Food and Environmental Hygiene

92B	Secretary for Home Affairs in respect of any activity specified in the Eleventh Schedule and the Secretary for the Environment and Food in respect of any activity specified in Schedule 11A
93	Director of Food and Environmental Hygiene
94	Director of Food and Environmental Hygiene
94A	Secretary for the Environment and Food
100	Director of Food and Environmental Hygiene
101	Director of Food and Environmental Hygiene
104	Secretary for the Environment and Food
105	Director of Buildings
105A	Director of Leisure and Cultural Services
105B	Director of Leisure and Cultural Services
105C	Director of Leisure and Cultural Services
105D	Secretary for Home Affairs
105E	Director of Leisure and Cultural Services
105G	Director of Leisure and Cultural Services
105H	Director of Leisure and Cultural Services
105I	Secretary for Home Affairs
105K	Director of Leisure and Cultural Services
105L	Secretary for Home Affairs
105M	Director of Leisure and Cultural Services
105N	Director of Leisure and Cultural Services
105O	Secretary for Home Affairs
105P	Director of Leisure and Cultural Services
105Q	Director of Leisure and Cultural Services
106(1) and (6)	Director of Leisure and Cultural Services
106(3) and (4)	Director of Lands
107	Director of Leisure and Cultural Services
108	Director of Leisure and Cultural Services
109	Secretary for Home Affairs
110	Director of Leisure and Cultural Services
111	Director of Leisure and Cultural Services
111B	Director of Lands
111C	Director of Lands
112	Director of Food and Environmental Hygiene
112A	Director of Food and Environmental Hygiene
114	Director of Lands in respect of cemeteries specified in Parts I, II and IVA of the Fifth Schedule
115	Director of Food and Environmental Hygiene in respect of cemeteries specified in Part I of the Fifth Schedule
116	Secretary for the Environment and Food in respect of cemeteries specified in Parts I and II of the Fifth Schedule
117	Director of Food and Environmental Hygiene
118(1) and (4)	Director of Food and Environmental Hygiene
118(2)	Director of Food and Environmental Hygiene in respect of cemeteries specified in Parts I, II and IVA of the Fifth Schedule
119A	Director of Food and Environmental Hygiene in respect of cemeteries specified in Part I of the Fifth Schedule
121	Director of Food and Environmental Hygiene

123	Secretary for the Environment and Food
123A	Director of Food and Environmental Hygiene
123B	Director of Food and Environmental Hygiene
123C	Secretary for the Environment and Food
124	Director of Food and Environmental Hygiene
124A	Director of Food and Environmental Hygiene
124B	Director of Food and Environmental Hygiene
124C	Director of Food and Environmental Hygiene
124D	Director of Food and Environmental Hygiene
124E	Secretary for the Environment and Food
124I	Secretary for the Environment and Food
124J	Secretary for Home Affairs
124K(1)	Director of Leisure and Cultural Services
124K(3)	Director of Leisure and Cultural Services
124L	Secretary for Home Affairs
127	Director of Food and Environmental Hygiene

(Schedule 3 replaced 78 of 1999 s. 7)

Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section:	6	Heading:	NAMES IN WHICH PROCEEDINGS FOR OFFENCES MAY BE BROUGHT UNDER SECTION 131(1)	Version Date:	01/01/2000

[section 131]

Section	Name in which proceedings for offences may be brought
6	Director of Drainage Services
7	Director of Drainage Services
9	Director of Drainage Services
10	Director of Drainage Services
13	Director of Food and Environmental Hygiene
14	Director of Food and Environmental Hygiene
20	Director of Food and Environmental Hygiene
22	Director of Food and Environmental Hygiene
22A	Director of Food and Environmental Hygiene
24	Director of Food and Environmental Hygiene
25	Director of Food and Environmental Hygiene
27	Director of Food and Environmental Hygiene or Director of Health
30	Director of Food and Environmental Hygiene
31	Director of Food and Environmental Hygiene
32	Director of Food and Environmental Hygiene
33	Director of Food and Environmental Hygiene
34	Director of Food and Environmental Hygiene

36	Director of Food and Environmental Hygiene
43	Director of Leisure and Cultural Services
47	Director of Food and Environmental Hygiene
50	Director of Food and Environmental Hygiene where the offence committed is in respect of food.
	Director of Health where the offence committed is in respect of drugs.
51	Director of Food and Environmental Hygiene
51A	Director of Food and Environmental Hygiene
52	Director of Food and Environmental Hygiene where the offence committed is in respect of food.
	Director of Health where the offence committed is in respect of drugs.
54	Director of Food and Environmental Hygiene where the offence committed is in respect of food.
	Director of Health where the offence committed is in respect of drugs.
59	Director of Food and Environmental Hygiene where the offence committed is in respect of food.
	Director of Health where the offence committed is in respect of drugs.
61	Director of Food and Environmental Hygiene where the offence committed is in respect of food.
	Director of Health where the offence committed is in respect of drugs.
62	Director of Food and Environmental Hygiene where the demand or requisition relates to food.
	Director of Health where the demand or requisition relates to drugs.
63	Director of Food and Environmental Hygiene where the certificate relates to food.
	Director of Health where the certificate relates to drugs.
68	Director of Food and Environmental Hygiene or Director of Health
69	Director of Food and Environmental Hygiene where the direction is given by him or a public officer authorized by him and the notification is given in relation to food.
	Director of Health where the direction is given by him or a public officer authorized by him and the notification is given in relation to drugs.
72	Director of Food and Environmental Hygiene where the offence committed is in respect of food.
	Director of Health where the offence committed is in respect of drugs.
81	Director of Food and Environmental Hygiene
83B	Director of Food and Environmental Hygiene
92C	Director of Leisure and Cultural Services in respect of section 92A and Director of Food and Environmental Hygiene in respect of section 92AB
93	Director of Food and Environmental Hygiene
94	Director of Food and Environmental Hygiene
101	Director of Food and Environmental Hygiene
105	Director of Buildings
110	Director of Leisure and Cultural Services
111D	Director of Lands
112	Director of Food and Environmental Hygiene
112A	Director of Food and Environmental Hygiene
115	Director of Food and Environmental Hygiene
117	Director of Food and Environmental Hygiene
118	Director of Food and Environmental Hygiene
124	Director of Food and Environmental Hygiene
124F	Director of Food and Environmental Hygiene

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128

Director of Food and Environmental Hygiene
Director of Food and Environmental Hygiene

(Sixth schedule replaced 78 of 1999 s. 7)

Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section:	7	Heading:	FORMS	Version Date:	01/01/2000

FORM A

[sections 64(1) & 65(1)]

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)

Certificate of analysis

To

I, the undersigned, being a public analyst for the purposes of the Public Health and Municipal Services Ordinance, do hereby certify that I received on the.....day of, 19.....from.....a sealed packed marked.....said to contain a sample of, that I found the seals intact and have analysed the contents of the said packet and declare the result of my analysis to be as follows.

I am of opinion that the same is a genuine sample of
.....
or

I am of opinion that the said sample contained the parts as under or the foreign ingredients as under

Observations

.....
.....

As witness my hand this.....day of....., 19.....

Signature.....
Government Chemist.
(or as case may be).

Note: All percentages given in definitions or standards prescribed are, unless otherwise specified, percentages by weight.

FORM B

[section 126(2)]

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)
(section 126(2))

Warrant to effect entry into premises

WHEREAS application has been made by A.B. to me, C.D., a magistrate of Hong Kong, to

authorize the said A.B. to enter certain premises.....(here insert description of premises), and whereas I, C.D., am satisfied by information on oath that there is reasonable ground for entry to such premises and that..... (here insert ground on which warrant is issued).

Now, therefore, I, the said C.D., do hereby authorize the said A.B. to enter the said premises, if need be by force, with such assistants as he may require, and there execute his duties under the said Ordinance.

Dated this.....day of....., 19.....
[L.S.]

(Signed).....
Magistrate.
(Amended 47 of 1997 s. 10)

FORM C

[section 127(1)]

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)
(section 127(1))

Nuisance notice

To(person by reason of whose act, default or sufferance the nuisance arose or exists, or owner or occupier of the premises at which the nuisance exists, as the case may be).

1. Take notice that under the provisions of the Public Health and Municipal Services Ordinance, the.....(specify the Authority), being satisfied of the existence at.....(describe premises where nuisance exists) of a nuisance, being..... (describe the nuisance), do hereby require you, within.....(specify the time) from the service of this notice, to abate the nuisance, and for that purpose to..... (specify any works to be executed) [and the said(Authority) do hereby require you within the said period to do what is necessary for preventing the recurrence of the nuisance and for this purpose to..... (specify any works to be executed)].

Where the nuisance has been abated but is likely to recur, say..... being satisfied that at.....(describe premises where nuisances existed) there existed recently, namely, on or about the(specify the date), the following nuisance, namely,(describe the nuisance), and that although the said nuisance has since the last mentioned day been abated, the nuisance is likely to recur at the said premises, do hereby require you, within.....(specify the time) from the service of this notice, to do what is necessary for preventing the recurrence of the nuisance, and for that purpose to.....(specify any works to be executed).

2. If you make default in complying with the requirements of this notice (or if the said nuisance, though abated, is likely to recur) application will be made to a Magistrate's Court for a summons to be issued requiring your attendance before such court to answer a complaint which will be made for the purpose of enforcing the abatement of the nuisance and/or prohibiting the recurrence thereof, or both, and for recovering the costs and penalties that may incurred thereby.

Dated this.....day of....., 19.....

Signature.....

FORM D

[section 127(4)]

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)
(section 127(4))

Nuisance Order

To A.B., of.....(or to the owner or occupier of) (describe premises) situated (insert such description of the situation as may be sufficient to identify the premises), WHEREAS the said A.B. (or the owner or occupier, namelyof the said premises within the meaning of the Public Health and Municipal Services Ordinance has this day appeared before me (or us, describing the court) to answer the matter of a complaint made by &c. that at &c. (follow the words of complaint in summons) (or in case the party charged do not appear, say WHEREAS it has been now proved to my (or our) satisfaction that a summons has been duly served according to the Public Health and Municipal Services Ordinance, requiring the said A.B. (or the owner or occupier of the said premises) to appear this day before me (or us) to answer the matter of a complaint made by &c. that at &c.):

(Any of the following orders may be made or a combination of any of them, as the case seems to require).

Abatement order

Now on proof here had before me (or us) that the nuisance so complained of does exist at the said premises (add, where the order is made on the person causing the nuisance, and that the nuisance is caused by the act, default or suffering of A.B.), I (or we), in pursuance of the Public Health and Municipal Services Ordinance, do order the said A.B. (or the said owner or occupier) within (specify the time) from the service of this order according to the said Ordinance to (here specify the nuisance to be abated).

Prohibition Order No. 1

And I (or we) being satisfied that, notwithstanding that the said nuisance may be temporarily abated under this order, the nuisance is likely to recur, do therefore prohibit the said A.B. (or the said owner or occupier) from allowing the recurrence of the said or like nuisance (and for that purpose I or we direct the said A.B. or the said owner or occupier [here specify any works to be executed]).

Prohibition Order No. 2

Now, on proof here had before me (or us) that at or recently before the time of making the said complaint, to wit, on.....the nuisance so complained of did exist at the said premises, but that the nuisance has since been abated (add where the order is made on the person causing the nuisance, and that the nuisance was caused by the act, default or suffering of A.B.), yet, notwithstanding the abatement, I (or we) being satisfied that it is likely that the same or the like nuisance will recur at the said premises, do therefore prohibit (continue as in Prohibition Order No. 1).

Closing order

Now, on proof here had before me (or us) that the nuisance is such as to render the dwelling-house (describe the house) situated at (insert such a description of the situation as may be sufficient to identify the dwelling-house) unfit in my (or our) judgment for human habitation, I (or we) in pursuance of the Public Health and Municipal Services Ordinance, do hereby prohibit the use of the said dwelling-house for human habitation.

Dated this.....day of....., 19.....
[L.S.]

(Signed)
Magistrate.
(Amended 32 of 1963 s. 17; 47 of 1997 s. 10)

FORM E

[section 112A(1)(a)]

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)
(section 112A(1))

Notice to bury or cremate human remains

To.....
(person who has the right to effect the disposal of the remains of the deceased).

WHEREAS.....(specify name of deceased), hereinafter referred to as "the deceased", died at.....(specify place of death).....on or aboutday of.....19.....(specify date of death):

AND WHEREAS-

- (a) a certificate of registration of such death was issued under section 17(1) of the Births and Deaths Registration Ordinance (Cap 174) on the.....day of19.....(specify date of issue); or
- (b) an order under section 17(1) of the Births and Deaths Registration Ordinance to bury or cremate the body of the deceased was obtained from..... (specify name of person making order), a coroner, on the.....day of19.....(specify date of order); or
- (c) written sanction/direction* to bury the body of the deceased was given under section 16(1) of the Births and Deaths Registration Ordinance by..... (specify name of person making order), Registrar of Births and Deaths/deputy registrar of births and deaths/district registrar of births and deaths*, on the.....day of.....19..... (specify date of order); or
- (d) a permit to bury the body of deceased was issued under section 16(1) of the Births and Deaths Registration Ordinance by..... (specify name of inspector or other officer in charge the issued permit) of the..... police station (specify name

of police station at which the application for a permit was made) on the.....day of.....19.....(specify date of issue):
(complete whichever of paragraphs (a), (b), (c) or (d) is applicable and delete other paragraphs)
NOW TAKE NOTICE that under the provisions of the Public Health and Municipal Services Ordinance, the.....(specify the Authority) hereby requires you to cause the remains of the deceased to be lawfully buried or cremated within(specify period) from the date of service of this notice on you.

IF you fail to comply with the requirements of this notice, the.....
..... (specify the Authority) may take possession of such remains and arrange for their disposal in any manner it/he* may think fit. You will also be guilty of an offence.

THIS notice does not exempt you from any provision in any other enactment governing the burial or cremation of human remains. In particular, if you wish to cremate the remains of the deceased, you must comply with the provisions of sections 124C, 124D, 124E and 124F.
Dated this.....day of....., 19.....

Signature

Note: *Delete whichever is inapplicable.

(Added 48 of 1969 s. 12. Amended 21 of 1973 s. 17; 10 of 1986 s. 29)

FORM F

[section 128(1)]

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE

(Chapter 132)

(section 128(1))

Prohibition Order

CONCERNING the premises/vessel known as.....situated at

TO the occupier of the said premises/master of the said vessel OR to the occupier of part thereof, namely.....
(specify part the subject of the application).

WHEREAS application has been made to me by.....
.....
(public officer making the application) for an order prohibiting the use of the above premises/vessel/specified part as.....(specify use to be prohibited) on the grounds that the said premises are/vessel is/specified part is being used without registration/licence/permit OR in contravention of a suspension of registration/licence/permit OR in contravention of the provisions of the Public Health and Municipal Services Ordinance, namely.....
..... (specify the contravention):

NOW on proof to my satisfaction of the said grounds and that at least 14 days' notice of intention to apply for this Order has been given as required by law, I DO, in exercise of my powers under section 128(1) of the Public Health and Municipal Services Ordinance-

- (a) order that a copy of this Order, in English and Chinese, be served by affixing it to a conspicuous part of the said premises/vessel/specified part;
- (b) prohibit the use of the said premises/vessel/specified part thereof as/for.....
..... (specify use prohibited) from the 8th day after copies of this Order have been so served until such time as this Order may be rescinded in accordance with section 128(2) of the Public Health and Municipal Services Ordinance.

Dated this.....day of....., 19.....
[L.S.]

(Signed).....
Magistrate.

- Note:
- 1. The penalties for a breach of this Order are a fine at level 6 and imprisonment for 12 months and a fine of \$1750 for each day during which the offence continues.
 - 2. If this Order relates to premises, a vessel or a specified part to which regulations made under section 56 of the Public Health and Municipal Services Ordinance apply, failure to comply with it continuously from the 8th day after service of this Order may result in a Closure Order being made in respect of the premises/vessel/specified part.
 - 3. The penalty for removing or defacing a copy of this Order affixed to any premises, vessel or specified part is a fine at level 4 and imprisonment for 6 months.

(Added 76 of 1988 s. 6. Amended L.N. 164 of 1996; 78 of 1999 s. 7)

FORM G

[section 128(4)]

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE

(Chapter 132)

(section 128(4))

Closure Order

TO.....

(public officer making the application).

WHEREAS a Prohibition Order was made by me.....

..... (OR specify the person who made the order) on theday of.....19....., in respect of the premises/vessel/specified part known as

.....situated atprohibiting the use of those premises/that vessel/that part as..... (specify use prohibited);

AND WHEREAS application has been made to me for a Closure Order in respect of those premises/that vessel/that part, being premises/a vessel/a part to which regulations made under section 56 of the above Ordinance apply:

NOW on proof to my satisfaction that the Prohibition Order has not been continuously complied with from the 8th day after it was served and that at least 14 days' notice of intention to apply for this Order has been given as required by law, I DO, in exercise of my powers under section 128(4) of the Public Health and Municipal Services Ordinance, authorize you,

.....(public officer applying for the Closure Order)-

- (a) to serve a copy of this Order by affixing it to a conspicuous part of the said premises/vessel/specified part;
- (b) on the 8th day thereafter to close the said premises/vessel/specified part in the manner prescribed by law.

Dated this.....day of....., 19.....
[L.S.]

(Signed).....
Magistrate.

- Note:
- 1. It is an offence for any unauthorized person to enter or remain in or on the premises, vessel or specified part to which this Order relates after it has been served. The penalties are a fine at level 6 and imprisonment for 12 months and a fine of \$1750 for each day during which the offence continues.
 - 2. The penalty for removing or defacing a copy of this Order affixed to any premises, vessel or specified part or for breaking or interfering with any lock or seal placed on any premises, vessel or specified part is a fine at level 4 and imprisonment for 6 months.

(Added 76 of 1988 s. 6. Amended L.N. 164 of 1996; 78 of 1999 s. 7)

Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section:	9	Heading:	PENALTIES	Version Date:	01/01/2000

[section 150]

Section	Penalty	Daily penalty
6(1)(a), (b) or (c)	level 5	—
6(1)(d) or (e)	level 5	—
7(2)	level 5	—
9(a)	level 2	—
9(b)	level 4	—
10(3)	level 2	—
13(2)(a)	level 2	\$100 fine
13(5)	level 1	\$50 fine
14(2)(a)	level 2	\$50 fine
20(3)(b)	level 2	\$300 fine
22(1)(a)	level 2	\$50 fine
22A(1)(b)	level 2	\$100 fine
24(2)(a)	level 2	\$50 fine
25(a)	level 1	—
25(b)	level 2	—
27(2)(a) or (3)	level 4	\$450 fine
30(2)(a)	level 2	\$100 fine
31	level 1	—
32(2)(a)	level 2	\$100 fine
33(3)(a)	level 2	\$100 fine
34(a) or (b)	level 1	—
36(2)	level 2	\$100 fine
43(2)	level 1	—
47(2)(a)	level 2	\$100 fine
47(5)	level 1	—
50(4)	level 3 and 3 months imprisonment	—
51(5)	level 3 and 3 months imprisonment	—
51A(4) or (5)	level 3 and 3 months imprisonment	—
52(1) or (2)	level 3 and 3 months imprisonment	—
54(1) or (2)	level 5 and 6 months imprisonment	—
58(4) or (5)	level 3 and 3 months imprisonment	—
59(1A) or (3)	level 5 and 6 months imprisonment	—
61(1) or (2)	level 5 and 6 months imprisonment	—
62(4)	level 2	—
63(9)	level 2	—
68(3)	level 1	—
69(2)	level 3 and 3 months imprisonment	—
72(1) or (2)	level 5 and 6 months imprisonment	—
81(2)	level 1	—
83B(3)	level 2 and 1 month imprisonment (first conviction) level 3 and 6 months imprisonment (second or subsequent conviction)	\$300 fine \$300 fine
92C(1)	level 2 and 6 months imprisonment	

92C(2)	level 4 and 6 months imprisonment	\$450 fine
93(4)	level 3 and 3 months imprisonment	\$450 fine
94(3)	level 2	—
94(3A) or (3B)	level 3 and 3 months imprisonment	—
101(3)	level 3 and 3 months imprisonment	—
104A(2)	level 3	\$300 fine
104B(2)	level 3	\$300 fine
105(2)(a)	level 2	\$100 fine
110(2)	level 1	—
111D	level 3	—
112(1) or (2)	level 1	\$50 fine
112A(3)(a)	level 2	—
112A(3)(b)	level 2	\$100 fine
115(3)	level 2	—
117(2)	level 1	—
118(1) or (2)	level 2 and 6 months imprisonment	—
124(2)	level 2	—
124F(1)	level 2 and 6 months imprisonment	—
124F(2)	2 years imprisonment	—
124F(3)	5 years imprisonment	—
125(5)	level 2	—
127(3)(a) or (b)	level 3	\$200 fine
127(7)(a)	level 4	\$450 fine
128(3)	level 6 and 12 months imprisonment	\$1750 fine
128(10)(a)	level 6 and 12 months imprisonment	\$1750 fine
128(10)(b) or (c)	level 4 and 6 months imprisonment	—
139	level 4 and 6 months imprisonment	—

(Replaced 177 of 1996. Amended 78 of 1999 s. 7)
