

Letterhead of Environment and Food Bureau Government Secretariat

LC Paper No. CB(2) 1615/00-01(02)

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22 May 2001

Clerk to Bills Committee on
Public Health and Municipal Services
(Amendment) Bill 2001
(Attn: Mrs Constance Li)
Legislative Council Building
8 Jackson Road
Central, Hong Kong
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Dear Mrs Li

**Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2001**

Thank you for your letter of 11 May 2001. Our comments on the issues raised by Members at the last Bills Committee meeting are set out below for your consideration.

Examples of circumstances that may give rise to a "Reasonable Cause" under the new section 128C(1)

Examples of circumstances that may give rise to "reasonable cause" are listed below.

- Premises consisting of flimsy structures of a make-shift nature and not provided with proper water supply, sewerage system nor equipment for proper storage of food.
- Premises with choked or defective waste pipes, drains, manholes and other sanitary fittings, giving rise to flooding of food room or kitchen

by sewage which lead to high risk of contamination of food by faecal matter and sewage.

- Food premises located next to a source of pollution or contamination such as a septic tank or a soakaway toilet. Food in the premises is likely to be contaminated.
- Food premises without proper water supply and the operator uses water drawn from a well near a latrine/aqua-privy, a dirty water storage tank or a polluted stream.
- Availability of clinical data such as clinical presentation of victims and food consumption history which shows that the food in the premises is contaminated and unfit for human consumption.
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- Laboratory test results which reveal presence of highly infectious pathogens, such as E. coli O157:H7 and Vibrio cholerae O139 or presence of high levels of toxic chemicals in food.
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- Breeding places of arthropod pest or habitats of rodents found on the food premises. Premises infested with a large number of cockroaches, with rodents roaming around or with heavy fly infestation.

It should be noted that the above list is by no means exhaustive and only serves to illustrate what may constitute reasonable causes.

Time taken for appeal hearings to be held by Licensing Appeals Board

From 1 January 2000 to 30 April 2001, the secretary of the Licensing Appeals Board (LIAB) received a total of 23 appeals. All the appeals have been decided excepting one which is scheduled to be heard on 24 May 2001. For the heard appeals, the average time taken for the whole appeal process (i.e. from the date of receipt of appeal to the date of decision confirmed) is 103 calendar days and the shortest time taken so far is 63 days.

On the other hand, judging from our experience on other applications made to the Magistrates' Court under *the Public Health and Municipal Services Ordinance (Cap 132)*, we estimate that an appeals lodged against a closure order made by the Director of Food and Environmental Hygiene (the Director) or against the Director's refusal to rescind a closure order under the proposed new sections 128C(20) or (7) will probably be heard by the magistrate within 6 working days.

To provide for more objective standards concerning "contamination of water" and "infestation of vermin"

"Contamination of water"

Water may be contaminated by a wide range of hazards of microbiological, chemical or physical origins that may pose an immediate health hazard. In determining water contamination, the Food and Environmental Hygiene Department will follow the standards on hazards set by international authorities such as the World Health Organisation and Codex Alimentarius Commission. The list of standards on hazards covers over 100 chemicals and microbiological bacteria. In addition, there are hazards for which objective standard is not set and risk assessment needs to be made on a case-by-case basis. As such, it will be not practical to set out the specific standards concerning contamination of water in the Bill.

"Infestation of vermin"

The risk posed by vermin infestation needs to be evaluated based on the extent of vermin infestation, nesting of vermin, extent of food contamination, presence of pathogens in the vermin population and evidence of spread to humans. Each case needs to be assessed individually by Pest Control Officer and Medical Officer. It is therefore also not practical to set out specific standards concerning the infestation of vermin in the Bill.

An arrangement similar to "unless order"

We have considered other legislative arrangements serving a similar purpose as an "unless order", such as by revising section 128C to the effect that the Director may allow the business operator to remove the immediate health hazard within a certain period, say 48 hours, before the Closure Order comes into effect, or alternatively to issue an "Abatement Order" before the Closure Order is issued. However, according to our legal assessment, the above proposed amendments will unavoidably go against the legislative intent of the proposed new section 128C. The purpose of the new section 128C is to protect the public against exposure to *immediate* health hazards of which *time is of the essence* to remove such health hazard. If the legislation states explicitly that a short delay in closing the food premises is allowed, the Authority will have legal difficulty in proving to court and explaining to the public that an *immediate* health hazard does exist at all.

Yours sincerely,

(David K K Lau)
for Secretary for the Environment and Food

c.c.

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