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11 September 2001

Mrs Constance Li
Clerk to Bills Committee
Public Health and Municipal Services (Amendment) Bill 2001
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2509 0775)

Dear Mrs Li,

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

Thank you for your letter of 6 August 2001.

I attach at Annex A the latest draft CSAs for Members' consideration. You may wish to bring Members' attention to the following points –

- (a) New section 128D has been added to set out the composition and operation of the proposed Appeal Board.
- (b) Regarding the proposed operation of the Appeal Board, details of which have been set out in our earlier paper submitted to the Bills Committee vide our letter of 3 July 2001 (copy attached at Annex B for easy reference). After further study, we have fine-tuned some aspects of the proposal –

- (i) The qualification of the Chairman has been relaxed to ensure that we have a sufficient pool of candidates for appointment.
- (ii) We now propose to that a sitting of the Appeal Board will consist of the Chairman or a Deputy Chairman plus two other persons selected from rotation from the panel of members. We also consider that the Appeal Board should hear cases of appeal within 10 working days of receiving such appeals.
- (iii) If a person who appeals to the Appeal Board is dissatisfied with the decision of the Appeal Board, he could appeal to the Court of First Instance within 14 days after being served a copy of the decision and the reasons for the decision.

Regarding the costs of setting up and operating the Appeal Board, we envisage that the additional workload would be absorbed by the Environment and Food Bureau, with a secretary to the Appeal Board being appointed from existing staff. As the Appeal Board would only be convened if there is a case to hear, the administrative costs should be minimal. As for the appellant, the only requirement would be for him to submit his appeal in a specified form so the cost should be negligible.

The points raised at the last meeting of the Bills Committee by the Hon Audrey Eu in respect of the draft Bill and the CSAs have been addressed, where appropriate, by amendments incorporated into the current CSAs.

The following officers will attend the coming Bills Committee meeting on 17 September –

Mr David Lau
Principal Assistant Secretary (A)2
Environment and Food Bureau

Ms Winnie So
Assistant Director (Headquarters)
Food and Environmental Hygiene Department

Mr S W Wong
Senior Superintendent (Licensing)
Food and Environmental Hygiene Department

Mr Yip Wing-sang
Senior Assistant Law Officer (Civil)
Department of Justice

Mr Lawrence Peng
Senior Government Counsel
Department of Justice

Yours sincerely,

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

c.c. DFEH (Attn: Ms Winnie So)
D of J (Attn: Mr Yip Wing-sang
Mr Lawrence Peng)

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（相當於英文文本 3rd draft (2nd revised)）：	10. 9. 2001

《2001 年公眾衛生及市政（修訂）條例草案》

委員會審議階段

由環境食物局局長動議的修正案

PUBLIC HEALTH AND MUNICIPAL SERVICES
(AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment and Food

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) By adding -</p> <p>“(ab) by repealing subsection (1A);”.</p> <p>(b) In paragraph (b), by deleting the full stop at the end and substituting a semicolon.</p> <p>(c) By adding -</p> <p>“(c) in subsection (10)(c), by repealing “撕去” and substituting “移去” ”.</p>
3	<p>(a) In the proposed section 128A, in the heading, by deleting “and 128C” and substituting “, 128C and 128D”.</p> <p>(b) In the proposed section 128A(1), by deleting “and 128C” and substituting “, 128C and <u>128D</u>”.</p> <p>(c) By deleting the proposed section 128A(1)(b) and substituting -</p> <p>“(b) any premises -</p> <p>(i) on or from which any restricted food</p>

specified in Schedule 2 to the Food Business Regulation (Cap. 132 sub. leg.) is sold or offered or exposed for sale; or

- (ii) on which any such food is possessed for sale or for use in the preparation of any article of food for sale;”.

(d) In the proposed section 128A(1)(d), by deleting “regulation” and substituting “section”.

(e) In the proposed section 128A(2) -

- (i) by deleting “and 128C” and substituting “, 128C and 128D”;

- (ii) in the definition of “immediate health hazard”, by deleting “from or handled or sold on” and substituting “on or from, or handled or possessed on.”;

- (iii) by adding -

““Appeal Board” (上訴委員會) means the Appeal Board on Closure Orders (Immediate Health Hazard) established under section 128D;

“Chairman” (主席) means the Chairman of the Appeal Board appointed under section 128D(3);

“use” (用、使用) , in relation to any premises

referred to in subsection (1)(c), includes
occupy.”.

- (f) In the proposed section 128A(3) -
 - (i) by deleting “from or handled or sold on” wherever it appears and substituting “on or from, or handled or possessed on,”;
 - (ii) in paragraph (b), by deleting “a contaminated or unapproved source” and substituting “an unapproved source or from a source that, as shown from inspection findings, data from epidemiological investigation or other laboratory evidence, is contaminated with pathogens, biotoxins, chemicals or other substances”.
- (g) In the proposed section 128A, by adding -
 - “(4) In subsections (2) and (3) -
 - (a) a reference to food supplied on or from any premises includes food sold, or offered or exposed for sale, on or from the premises;
 - (b) a reference to food handled on any premises includes food manufactured on the premises; and
 - (c) a reference to food possessed on any premises means food possessed on the premises for sale or for use in the

preparation of any article of food for sale.”.

- (h) In the proposed section 128B(1) -
 - (i) in paragraph (a) -
 - (A) by deleting “將” and substituting “使用” ;
 - (B) by deleting “作某項用途” ;
 - (ii) in paragraph (b), by adding “進行” before “第” ;
 - (iii) by deleting “(as the case may be) on any premises” and substituting “on any premises (as the case may be)”;
 - (iv) by deleting “subsection” and substituting “subsections (1A) and”;
 - (v) by deleting “作如此用途，” and substituting “如此使用，” ;
 - (vi) by deleting “如此進行” and substituting “進行” .
- (i) In the proposed section 128B, by adding -
 - “(1A) Subsection (1) does not apply if -
 - (a) the use or the activity is required under section 30(1) of the Food Business Regulation (Cap. 132 sub. leg.) to be permitted;
 - (b) a food business within the meaning of that Regulation is carried on on or from the premises; and
 - (c) the food business is required under that

Regulation to be licensed and is licensed under that Regulation.”.

- (j) By deleting the proposed section 128B(2)(a) and substituting -
 - “(a) at least 7 days before the date fixed for the hearing of the application, a copy of the notice of intention to apply for the closure order, in both English and Chinese -
 - (i) was affixed at a conspicuous place on the premises; and
 - (ii) was served on the owner of the premises by sending the copy by registered post addressed to that owner’s last known place of business or residence;”.
- (k) In the proposed section 128B(4) -
 - (i) by deleting “to” where it first appears;
 - (ii) by deleting paragraph (a) and substituting -
 - “(a) if, at the date of application for the order, the premises are used for human habitation, to prevent such habitation on the premises; or”;
 - (iii) in paragraph (b), by adding “to” before “affect”.
- (l) In the proposed section 128B(7)(a), by deleting “the premises or the activity” and substituting”, or the activity to be conducted

on, the premises”.

- (m) In the proposed section 128B(8) -
 - (i) by adding “或安排他人將” after “須將” ;
 - (ii) by deleting “或安排他人如此行事” ;
 - (iii) by adding “或安排他人將” after “可將” ;
 - (iv) by deleting “或安排將其截斷” .
- (n) In the proposed section 128B(16), by deleting “掌控” and substituting “控制” .
- (o) In the proposed section 128C(1), by deleting “to which this section applies” where it secondly appears.
- (p) In the proposed section 128C(2) -
 - (i) by deleting “to” where it first appears;
 - (ii) by deleting paragraph (a) and substituting -
 - “(a) if, at the date of making of the order, the premises are used for human habitation, to prevent such habitation on the premises; or”;
 - (iii) in paragraph (b), by adding “to” before “affect”.
- (q) In the proposed section 128C(3), by deleting everything after “copy of it” and substituting -
 - “-
 - (a) is affixed at a conspicuous place on the premises in respect of which the

order is made; and

- (b) is served on the owner of those premises by sending the copy by registered post addressed to that owner's last known place of business or residence.”.
- (r) In the proposed section 128C(6)(a) -
 - (i) by deleting “或活動” ;
 - (ii) by deleting “用途或擬” and substituting “使用或擬在該處所內” .
- (s) In the proposed section 128C(6)(b), by adding “內” before “進行” .
- (t) In the proposed section 128C(7) -
 - (i) by deleting “court” where it first appears and substituting “Chairman”;
 - (ii) by deleting “court” where it secondly appears and substituting “Appeal Board”.
- (u) By deleting the proposed section 128C(8).
- (v) In the proposed section 128C(9) -
 - (i) by deleting “lodging” and substituting “making”;
 - (ii) by deleting “court” and substituting “Chairman”.
- (w) By deleting the proposed section 128C(10).
- (x) In the proposed section 128C(11) -

- (i) by adding “或安排他人將” after “須將” ;
 - (ii) by deleting “或安排他人如此行事” ;
 - (iii) by adding “或安排他人將” after “可將” ;
 - (iv) by deleting “或安排將其截斷” .
- (y) In the proposed section 128C(19), by deleting “掌控” and substituting “控制” .
- (z) In the proposed section 128C(20) -
- (i) by deleting “court” where it first appears and substituting “Chairman”;
 - (ii) by deleting “court” where it secondly appears and substituting “Appeal Board”.
- (za) By deleting the proposed section 128C(21).
- (zb) In the proposed section 128C(22) -
- (i) by deleting “lodging” and substituting “making”;
 - (ii) by deleting “court” and substituting “Chairman”.
- (zc) By deleting the proposed section 128C(23).
- (zd) By adding -

**“128D. Appeals to Appeal Board on Closure Orders
(Immediate Health Hazard)**

(1) There is established an appeal board to be known as the Appeal Board on Closure Orders (Immediate Health Hazard).

(2) The functions of the Appeal Board are to

hear and determine any appeal made to the Appeal Board under section 128C(7) or (20).

(3) The Chief Executive shall appoint to be the Chairman of the Appeal Board a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336).

(4) The Chief Executive shall appoint a panel of not less than 15 persons, not being public officers, whom he considers suitable for appointment under subsection (8) as members of the Appeal Board to hear an appeal, 2 of whom he shall appoint to be the Deputy Chairmen of the Appeal Board.

(5) An appointment under subsection (3) or (4) shall be notified in the Gazette and shall be for a term of not more than 3 years. A person appointed under subsection (3) or (4) may be re-appointed, and may resign by notice in writing to the Chief Executive.

(6) The Secretary for the Environment and Food may appoint -

- (a) a secretary to the Appeal Board;
- and
- (b) such other staff to assist the secretary as the Secretary

considers necessary.

(7) The parties to an appeal to the Appeal Board are the appellant and the Authority for the purposes of section 128C, A party to an appeal may be present at the hearing of the appeal and may -

- (a) make representations in person;
or
- (b) be represented by counsel or solicitor or, with the approval of the Chairman, by any other person authorized by the party in writing.

The Authority may also be represented by a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).

(8) For the purposes of hearing an appeal, the members of the Appeal Board are -

- (a) the Chairman, who shall preside;
and
- (b) 2 other persons, selected in rotation from the panel referred to in subsection (4), who are appointed by the Chairman to hear the appeal.

(9) If after the commencement of the hearing

of an appeal, a member of the Appeal Board (other than the person presiding) is unable to continue, the Chairman may appoint another person, selected in rotation from the panel referred to in subsection (4), to hear the appeal in the member's place. The hearing may, with the consent of the parties to the appeal, continue notwithstanding a change in the membership of the Appeal Board.

(10) For the purposes of an appeal, the Appeal Board -

(a) may receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in evidence in civil or criminal proceedings; and

(b) may -

(i) on an appeal under section 128C(7), confirm the Authority's decision or order the Authority to issue a notice under section 128C(6); or

(ii) on an appeal under section 128C(20), confirm, suspend or disallow the closure order.

(11) Every question before the Appeal Board shall be determined by the opinions of the majority of members hearing the appeal.

(12) The Appeal Board shall give reasons in writing for its decisions. The secretary to the Appeal Board shall serve a copy of the Appeal Board's decision and of the reasons for the decision on the parties to an appeal.

(13) A person who appeals to the Appeal Board, if dissatisfied with the decision of the Appeal Board, may appeal to the Court of First Instance within 14 days after being served with a copy of the decision and the reasons for the decision. In that case, the Chairman may, in his discretion, suspend the operation of the closure order to which the appeal relates pending the determination of the appeal by the Court of First Instance.

(14) Subject to this section and to rules made under subsection (16), the person presiding may

determine the procedure at the hearing of an appeal made to the Appeal Board.

(15) The Chairman may, on application in writing by a person and if satisfied that there is good reason for doing so -

- (a) extend the time within which that person may appeal to the Appeal Board under section 128C(7) or (20); and
- (b) order a stay of execution of the closure order to which an appeal made by that person under section 128C(7) or (20) relates.

(16) The Chairman may, in consultation with the Secretary for the Environment and Food, make rules -

- (a) regulating the making of appeals to the Appeal Board;
- (b) specifying the documents to be lodged or served in relation to appeals; and
- (c) providing for the hearing and determination of those appeals and

the enforcement of the decisions
of the Appeal Board.

The rules so made are subsidiary legislation.

(17) If, for any period, the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Deputy Chairmen of the Appeal Board shall take turn to act as Chairman, and as such to exercise all the functions of the Chairman during that period.”.

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(a) By deleting “by adding -” and substituting -

“-

(a) in Form F, in Note 3, by repealing “ 撕 去 ” and substituting “移去” ;

(b) in Form G, in Note 2, by repealing “ 撕 去 ” and substituting “移去” ;

(c) by adding -”.

(b) In the proposed Form H -

(i) by adding “or occupied” after “used”;

(ii) by deleting “a notice” and substituting “a copy of the notice”;

(iii) by adding “and served on the owner of the premises/vessel*” before “as required”.

- (c) In the proposed Form I -
 - (i) by adding “owner and” before “occupier”;
 - (ii) by adding “owner and” before “master”;
 - (iii) by deleting “NOW on proof to my satisfaction” and substituting “I now have reasonable cause to believe”;
 - (iv) by deleting “the use of the prenrises/vessel/that part of the vessel/the activity*” and substituting “the use or occupation of/the activity to be conducted on or in* the premises/vessel/that part of the vessel*”;
 - (v) by adding “or occupied” after “not be used”;
 - (vi) by adding “/in the vessel/in that part of the vessel*” after “conducted on the premises”;
 - (vii) by deleting “to seek legal remedy” and substituting “against this order”.

- (d) In the proposed Form J -
 - (i) by adding “owner and” before “occupier”;
 - (ii) by adding “owner and” before “master”;
 - (iii) by adding “or occupation” after “the use”;
 - (iv) by deleting “activity conducted on*” and substituting “the activity conducted on or in*”;
 - (v) by adding “or occupied” after “not be used”;
 - (vi) by adding “/in the vessel/in that part of the vessel*” after “conducted on the premises”.