

LC Paper No. CB(2) 54/01-02(01)

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11 October 2001

Mrs Constance Li
Clerk to Bills Committee
Public Health and Municipal Services (Amendment) Bill
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
Meeting on 16 October 2001**

Thank you for your letter of 18 September 2001.

Our comments on the issues raised in your letter are set out below –

- (a) *Minimum time in preparation for hearing* – One of the legal rules under the Rule of Natural Justice is that parties to proceedings must be afforded a fair opportunity to prepare their case and know of the opposite party's case. Hence, both the appellant and the Food and Environmental Hygiene Department ("FEHD") have to serve their statements or representations on the other side prior to the appeal

hearing so as to afford the other side reasonable time to respond thereto at the hearing.

We have prepared a chart at Annex A which showed why we believe that 10 working days is a reasonable timeframe to arrange for the hearing.

- (b) *“Pre-hearing”* – As explained at the last Bills Committee hearing, the appellant may apply in writing to the Chairman of the Appeal Board for a stay of execution of the closure order in accordance with the proposed section 128D(15)(b). We still believe that a “pre-hearing” would offer no advantage over a written application for a stay of execution of the closure order.
- (c) *Section 128C(13)(d)* – The proposed section 128C(2) will make any closure order issue under 128(1) inoperative to the extent of the existence of human habitation on the premises which are subject to the closure order. As such, we do not believe it necessary to propose amendment to section 128C(13)(d) as any closure order in force would be inoperative against persons referred to under section 128C(2).
- (d) *Absence of Chairman/Deputy Chairman from Hong Kong* – Taking into account of Members’ views, we have replaced sections 128D(9) and (17) with sections 128D(9) to (9D) in the new CSAs at Annex B. We have also expanded the membership of the Appeal Board panel to 20 persons of whom five would be appointed Deputy Chairmen.

The following officers will attend the next Bills Committee meeting –

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

Mr Warner Cheuk, Deputy Director (Environmental Hygiene), Food and Environmental Hygiene Department

Ms Winnie So, Assistant Director (Headquarters), 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: Mr Warner Cheuk
Ms Winnie So)

D of J (Attn: Mr Yip Wing-sang
Mr Lawrence Peng)

**Time frame for the Processing
of Appeal Cases after Receipt of Application**

- Day1 - 2
- to contact and confirm attendance of Chairman or Deputy Chairman and members.
 - to refer the case to FEHD to prepare statements.
- Day 2 - 4
- FEHD to prepare the statements (and Appellant to prepare representation if appropriate).
- Day 5 - 7
- legal adviser in Department of Justice to clear the statements.
 - translation
 - FEHD to check the cleared statements both in English and Chinese and send them to the Appeal Board.
- Day 8 - 10
- Chairman/Deputy Chairman and members to consider details of the case based on the statements and representations made by FEHD (and Appellant as appropriate).
 - to send a copy of FEHD's statements to the Appellant and vice versa if the Appellant has submitted representation.
 - to notify Appellant and FEHD of the details of the hearing.