

Your Ref:
Our Ref: EFB CR 10/8/7

Tel: 2136 3333
Fax: 2136 3281

18 April 2001

Mrs Constance Li
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central, Hong Kong

Dear Mrs Li,

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

I refer to your letter of 28 March 2001. Our response to the issues raised by Members at the last meeting is as follows.

Whether the appellant can seek further appeals and remedies under the proposed legislation

Under section 128C(20) of the bill, an aggrieved party may appeal to the court (here refers to the magistrate) against the Director of Food and Environmental Hygiene's order and the court may confirm, suspend or disallow the order. The decision of the court is final. As I have explained at the meeting, it is in the interest of both the aggrieved party and the Authority to prevent appeals being dragged on. Having said this, so long as a further appeal will not absolve the aggrieved party from eliminating the immediate health hazard while awaiting the outcome of the appeal, we are prepared to consider Members' suggestion to allow further appeal against the magistrate's decision. You may wish to note that unless the contrary is stated, section 105 and section 113 of the Magistrates Ordinance (Cap.227) allow an appeal against any order or determination of a magistrate to a judge.

As regards the question of seeking compensation from the authority for wrongful closure, you may wish to note that new section 128C is intended to, and do, leave any right of action or other remedy for wrongful closure/disposal/removal that may exist unaffected. Furthermore, section 138 provides that nothing in it shall be construed as relieving the Government from

liability in respect of the acts of its servants. In other words, the HKSAR Government is not absolved from liability of its servants. This section impliedly allows civil claims for wrongful act by the authority. A general provision to reiterate such right or remedy in new section 128C is considered unnecessary.

Provision of information to owner of the premises concerned

We will consider adding a separate subsection, along the line of section 128(6), in section 128C requiring a copy of the closure order to be served -

- (a) by sending it to the owner of the premises concerned by registered post addressed to his last known place of business or residence; and
- (b) by posting it on a conspicuous part of the premises in respect of which it is made.

Time required for issuing licences

The requested information is attached.

Yours sincerely,

(Ms Eva To)
for Secretary for the Environment and Food

c.c.

DFEH (Attn: Miss Sarah Wu	2536 0355
Mr Warner Cheuk)	2530 1368
Dr P Y Leung	2536 9731
D of J (Attn: Mr Lawrence Peng	2845 2215
Mr Yip Wing-sang)	2523 5014

**Application for and Issue of Food Business Licences
For the Period 1.6.2000 - 31.12.2000**

	Restaurant Licences	Other Food Business Licences
(a) No. of application for Provisional Licence (P/L)	770	527
(b) No. of P/L issued	551	223
(c) Average time taken to issue a P/L	2.9 months	2.9 months
(d) Best achievable time to issue a P/L	1 month	1 month
(e) No. of application for Full Licence (F/L)	809	769
(f) No. of F/L issued	96	234
(g) Average time taken to issue a F/L	7.5 months	4.2 months
(h) Best achievable time to issue a F/L	3.5 months	1 month
(i) Of the P/L issued in (b), the no. not yet issued with a F/L	460	168