

Your Ref:

Our Ref:

Tel: 2136 3333

Fax: 2136 3281

09 May 2001

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

Dear Mrs Li,

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

Thank you for your letter of 20 April 2001. Our comments on the issues raised by Members at the last Bills Committee meeting are set out as follows for your consideration.

To specify under section 128C(7) the period within which the Authority must serve a notice of refusal on the applicant concerned if the Authority refuses to rescind a closure order

2. We have reservation on setting a specific time limit for issuing a notice of refusal to application for rescinding a closure order. An arbitrarily short time limit may not be sufficient for the department to verify the elimination of a health hazard because, in some cases, for example, this would require taking samples to laboratories for testing. On the other hand, setting a longer timeframe may not be fair to applicants in other circumstances. Section 70 of the Interpretation and General Clauses Ordinances (Cap.1) has already provided that, where in the absence of a time limit, the Authority has to deal with an application without unreasonable delay. This will make the Authority accountable if it unreasonably delays the issuance while at the same time allows some flexibility.

To consider the suggestion regarding the introduction of an "unless order'

3. We have reservation about building in the requirement of an "unless order" in to the proposed legislation, which is supposed to give the operator a last chance by ordering him/her to eliminate the health hazard before a closure order is issued.

4. Such a system, in our view, does not fit in with the existing provisions of the Bill which aims to protect the public against exposure to immediate health hazard of which time is an essence. Apparently, an arrangement that is similar to the proposal of an "unless order" may be a nuisance order or an abatement order under section 127 of Cap. 132 which mainly deals with abatement of environmental nuisances. Practically, there is also the problem of setting the time limit for an "unless order". Setting too short a timeframe for eliminating the immediate health hazard is of little use to the operator, and setting one long enough would defeat the very purpose of empowering the Authority to order closure of food business which pose immediate health hazard to the public. Instead of relying on an "unless order" provided in the statute, in reality, the Authority can always warn the operator before making a closure order or the operator would have already had the chances to make good when the Authority first approaches the operator for investigation of the case.

To provide the number of licensed food establishments which has been ordered closure in the past one to two years and the time required for the appeal processes

5. Currently, the Director of Food and Environmental Hygiene can neither order the closure of licensed food establishments nor apply to the court for their closure on grounds of immediate health hazards. No closure order was issued against licensed food establishment in the past two years by the Director of Health under the Prevention for the Spread of Infectious Diseases Regulation. The latest order was issued in March 1998 to a food premises in Causeway Bay ordering for disinfection, disinsecting and deratting in relating to an outbreak of cholera. The regulation does not provide for an appeal channel.

Appeal against the decisions of Director of Food and Environmental Hygiene (DFEH) for closing food establishments which pose an immediate health hazard

6. Under the Bill, we propose that appeals against DFEH's decision should be made to the magistrate court. Members asked us to consider whether appeals should be made to the Licensing Appeals Board

(LIAB) and provide detailed information on rules procedures governing appeals heard by the board.

(i) statutory provisions and regulations governing the operation of the LIAB

7. Following the dissolution of the two former Provisional Municipal Councils on 1 January 2000, DFEH and the Director of Leisure and Cultural Services have been appointed as the licensing authorities for the majority of licences/permits issued under Cap. 132. A Licensing Appeals Board (LIAB) has also been set up to take on the responsibility for considering appeals lodged under section 125(9) of Cap. 132 (an extract is at **Appendix I**) by persons dissatisfied with the decisions of the licensing authorities. The establishment, functions, powers, constitution and meeting procedures of the LIAB are provided for under sections 125A to 125I of Cap. 132, an extract of which is at **Appendix II**. The licences and permits issued under section 125 of Cap. 132 and which come under the jurisdiction of the LIAB are at **Appendix III**.

8. Section 125G of Cap. 132 provides that the LIAB may make rules for regulating the making of appeals to the Board, specifying the documents to be lodged or served in relation to an appeal and providing for the hearing and determining of those appeals and the enforcement of the Board's decisions. Such a set of rules is subsidiary legislations and have been formally approved by the Board and passed by the Legislative Council. A set of rules is attached at **Appendix IV**.

9. In brief, a person exercising a right of appeal under Section 125(9) of Cap. 132 shall notify the secretary of the LIAB within 14 days upon the receipt of the notice by the licensing authority. The notice should set out the grounds of appeal and shall attach copies of all relevant documents, if any, on which he/she intends to rely in support of his appeal. The secretary of the LIAB shall, as soon as practicable after a notice of appeal is accepted, serve a copy of it and copies of any documents attached to it on the licensing authorities. The licensing authority shall, within 28 days after receiving a copy of the notice of appeal or such longer time as may be allowed by the Chairman of LIAB, lodge with the Secretary and serve on the appellant a statement relating to the decision appealed against and a copy of any other document which is in the possession or under the control of the licensing authority and is considered by that authority to be relevant to the appeal (in both English and Chinese). The date, time, place and the composition of the Board for the hearing are to be fixed by the secretary in consultation with the presiding person of the hearing. The secretary shall notify the appellant and the licensing authority in writing of the arrangements at least 14 days before the date fixed for the hearing. This is to allow time for both parties to prepare for the hearing e.g. authorizing a

representative to make submission at the meeting and/or to collect further documents or material in support their claims. Furthermore, the Board may upon the written request of either party to an appeal, invite by notice in writing any person who may be affected by the decision of the Board, or on its own motion invite by notice in writing any person identified to have made representations to the licensing authority regarding the matters in respect of which the decision appealed against was made, to make representations at the hearing of the appeal. The appellant, if dissatisfied with the decision of the Board may appeal to the Municipal Services Appeals Board (MSAB) within 14 days after receiving notice of the decision (Section 125B(4), Cap. 132). We understand that the MSAB is also required to follow a set of rules and regulations in hearing appeals.

(ii) Proposal to extend the jurisdiction of the LIAB to cover appeals against immediate closure of food establishments posing immediate health hazards

10. We have explained at the last Bills Committee meeting that it is inappropriate to extend the jurisdiction of the LIAB to cover appeals against immediate closure of food establishments posing immediate health hazards. We would like to set out our views again as follows for Members' consideration :

- (i) The jurisdiction of the LIAB is specifically stated in section 125(8) and (9) of Cap. 132, namely to hear all appeals lodged by the licensee or licence applicant when his/her licence is being cancelled, suspended or its grant or renewal is being refused. The proposed closure order to be issued by DFEH on the ground of immediate health hazard does not aim to distinguish whether the subject premises are being licensed or unlicensed. The legal basis for the closure of the premises is to safeguard the public from being exposed to the highly dangerous health risk so identified from the premises and the closure order is not directly related to licensing matters.
- (ii) As explained in paragraphs 8 to 10 above, the operation and hearing of appeals by the LIAB are governed by the LIAB Rules. The various statutory time limits relating to the serving of meeting notices and lodging of documents aim to ensure a fair hearing. Based on past experience, at least 45 days counting from the date of receipt of an appeal notice from the appellant must be allowed before the LIAB can hear an appeal. On the other hand, the magistrate court should be able to deal with similar appeal in a much

more expeditiously manner. When the aggrieved party takes out a court summons from the magistracy under the new section 125C(7) or (20) to appeal against the closure order made, it will normally take around 6 days from the time when the summons is issued by the court to the date when the appeal is heard. Furthermore, it is generally understood that the First Clerk of the magistrate court will have a discretion to fix an earlier day for hearing the appeal application if the urgency so justifies. Both from the aggrieved party and FEHD's point of view, a summary procedure adopted by the magistrate court will enable speedy disposal of the appeal and benefit both parties.

- (iii) The magistrate court is a competent authority in dealing with appeals of this nature. At present, offences of operating an unlicensed food business premises or breaches relating to unhygienic food are summary offences to be tried by the magistrate court. Furthermore, closure order of unlicensed food establishments issued under existing section 128 is also granted by the magistrate court on application by DFEH. On the other hand, the LIAB is only tasked to deal with licensing matters of which over 50% of the total cases heard by the LIAB since 1 January 2000 related to hawker licences and billiard establishment licences. The remaining cases concern suspension and cancellation of food business licences in accordance with a demerit points system introduced by the two former Provisional Municipal Councils.
- (iv) In view of the fact that the jurisdiction of LIAB is provided for in section 125 of Cap. 132 and that its rules are subsidiary legislation, legislative amendments to the principal ordinance of Cap. 132 as well as the rules are required before the LIAB can hear appeals lodged against the closure order. Even if we were to extend the jurisdiction of LIAB (despite the various problems we have pointed out), there is the problem that appeal against the closure order made in respect of unlicensed premises is still required to be dealt with by the magistrate court. It is inappropriate and may cause unfairness to have two distinctive authorities of different background to hear appeals lodged by the trade for the same purpose of

determining whether there is an imminent health hazard in existence, and if so, whether it justifies a closure of the premises.

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
D of J (Attn: Mr Lawrence Peng	2845 2215
Mr Yip Wing-sang)	2523 5014

BLIS ON

INTERNET

Section of Enactment

▼					
Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section:	125	Heading:	General provisions as to licences, etc.	Version Date:	01/01/2000

(1) Where, under the provisions of this Ordinance, any public officer (referred to in this section as the licensing authority) is empowered to require registration or to grant any licence or permit, such registration, licence or permit, as the case may be, shall, subject to the provisions of this Ordinance and any regulations made thereunder- (Amended 78 of 1999 s. 7)

(a) be made, granted or renewed subject to such requirements, conditions or restrictions as the licensing authority may think fit to impose for the purpose of carrying out the objects of this Ordinance, and may, for the like purpose, include a declaration by the licensing authority waiving the application of any of the provisions of any regulation made under this Ordinance; (Amended 9 of 1976 s. 14; 69 of 1985 s. 2)

(b) be refused, suspended or cancelled at the sole discretion of the licensing authority for the purpose of carrying out the objects of this Ordinance, but no registration, licence or permit shall be suspended or cancelled for any cause other than the contravention of any of the provisions of this Ordinance or of any requirement, condition or restriction to which such registration, licence or permit was subject. (Amended 69 of 1985 s. 2)

(1A) Subject to section 124M, subsection (1)(a) does not authorize a licensing authority to include in any registration, licence or permit a declaration waiving any provision relating to the payment of fees in a regulation made under this Ordinance. (Added 9 of 1976 s. 14. Amended 10 of 1986 s. 17; 78 of 1999 s. 7)

(1B) (a)The renewal of any registration, licence or permit, if application therefor is made by the lawful holder on or before the date of expiry thereof accompanied by the fee or charge (if any) prescribed therefor, shall not be-

(i) refused unless notice in writing of its intention to refuse the same has been served by the licensing authority upon such holder not less than 90 days preceding the date of expiry of such registration, licence or permit, except where any of the requirements, conditions or restrictions to which such registration, licence or permit was subject has been contravened within the period of 90 days immediately preceding such date of expiry, in which case no such notice shall be required;

(ii) subject to additional or alternative conditions to those imposed in the registration, licence or permit in respect of which the application for renewal is made unless notice in writing of its intention to impose additional or alternative conditions has been served by the licensing authority upon such holder not less than 90 days preceding the date of expiry of such registration, licence or permit.

(b) Where application for renewal of any registration, licence or permit is not made or any fee or charge prescribed in respect thereof is not paid on or before the date of expiry thereof, renewal of the same may be refused without notice. (Added 69 of 1985 s. 2)

(2) Save where the licensing authority thinks fit, no registration, licence or permit shall be made or granted in the name or more than one person:

Provided that nothing in this subsection shall be construed to prevent the making of any registration or the granting of any licence or permit in the name of a corporation.

(3) Subject to the provisions of any regulations made under this Ordinance, every registration, licence or permit shall be transferable.

(4) On any transfer of a registration, licence or permit under the provisions of subsection (3), the person to whom the transfer is made shall, within 7 days after the transfer is effected, deliver to the licensing authority a notice, in such form (if any) as may be prescribed by the licensing authority signed by the

transferor or by some person authorized in writing in that behalf by him and signed by the person to whom the transfer was made or by some person authorized in writing in that behalf by him.

(5) If any person fails to give notice of the transfer of any registration, licence or permit as required by subsection (4)-

(a) such person shall be guilty of an offence; and

(b) the licensing authority may, without notice, cancel such registration, licence or permit.

(6) Where any person who is registered, or who is the grantee of any licence or permit issued, under the provisions of this Ordinance absents himself from Hong Kong for a period exceeding 30 days without giving notice in writing to the licensing authority, or, in the opinion of the licensing authority, is not, or has ceased to be, ordinarily resident in Hong Kong, the licensing authority may, without notice, cancel such registration, licence or permit, and, in the case of a corporation which is registered under the Companies Ordinance (Cap 32), the licensing authority may also cancel such registration, licence or permit if the corporation has ceased to be so registered. (Amended 10 of 1986 s. 24)

(6A) Where any person who is registered, or who is the grantee of any licence or permit issued, under the provisions of this Ordinance is not, in the opinion of the licensing authority, carrying on the business or activity to which such registration, licence or permit relates, the licensing authority may cancel the same without notice. (Added 57 of 1978 s. 4)

(7) Where any person who is registered, or who is the grantee of any licence or permit issued, under the provisions of this Ordinance intends to absent himself from Hong Kong for a longer period than 30 days, the licensing authority may require him to appoint a delegate for such period not exceeding 6 months as the licensing authority may consider reasonable, and such delegate shall, during that period, be deemed for all purposes under this Ordinance to be the person in whose name such registration was made or to whom such licence or permit was granted, and failure to appoint such delegate if so required under this subsection shall be a ground for cancellation of such registration, licence or permit. (Amended 10 of 1986 s. 24)

(8) Where any registration, licence or permit is cancelled or suspended, or any application for the grant or renewal thereof is refused, by the licensing authority, the licensing authority shall forthwith serve a notice in writing upon the holder thereof or applicant therefor, as the case may be, declaring its decision.

(9) A person dissatisfied with a decision referred to in subsection (8) may, within 14 days after the service on him of the notice declaring the decision, appeal to the Licensing Appeals Board established under section 125A against the decision. (Replaced 78 of 1999 s. 7)

(10) If an appeal is made under this section, the licensing authority may, in its discretion, suspend the operation of the decision to which the appeal relates, pending the determination of the appeal. (Replaced 78 of 1999 s. 7)

(11) No registration, licence or permit granted under the provisions of this Ordinance shall be taken to exempt or excuse any person from compliance with any of the provisions of any other enactment.

BLIS ON

INTERNET

Section of Enactment

▼ Chapter: 132	Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number: L.N. 320 of 1999
Section: 125A	Heading: Establishment and membership of Licensing Appeals Board	Version Date: 01/01/2000

- (1) There is established a board to be known as the Licensing Appeals Board.
- (2) The Board is to consist of-
 - (a) a Chairman;
 - (b) a Vice-Chairman; and
 - (c) not less than 13 other members,
appointed by the Chief Executive in accordance with this section.
- (3) A public officer may not be appointed to the Board under subsection (2).
- (4) A person appointed as Chairman or Vice-Chairman or other member under subsection (2) is to hold and vacate office in accordance with the person's terms of appointment.
- (5) A member may resign as member, Chairman or Vice-Chairman by giving written notice to the Chief Executive.

(Added 78 of 1999 s. 7)

BLIS ON

INTERNET

Section of Enactment

▼				
Chapter: 132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section: 125B	Heading:	Functions and powers of the Board and appeals from its decisions	Version Date:	01/01/2000

(1) The function of the Board is to hear and determine any appeal which lies to the Board under section 125.

(2) In determining an appeal, the Board may exercise all the powers and discretions that are conferred on the person who made the decision appealed from.

(3) In determining an appeal, the Board may affirm, vary or set aside the decision and, where it sets aside the decision, it shall substitute its own decision. The Board may also extend the time specified, if any, for complying with the requirement of any notice issued, or an order made by the licensing authority referred to in section 125.

(4) A person who appeals to the Board, if dissatisfied with the decision of the Board may appeal to the Municipal Services Appeals Board within 14 days after receiving notice of the decision.

(5) If an appeal is made under subsection (4), the Board may, in its discretion, suspend the operation of the decision to which the appeal relates, pending the determination of the appeal.

(Added 78 of 1999 s. 7)

BLIS ON

INTERNET

Section of Enactment

▼				
Chapter: 132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 320 of 1999
Section: 125C	Heading:	How the Board is to be constituted for the purposes of an appeal	Version Date:	01/01/2000

- (1) For the purposes of hearing an appeal or making a decision for the purposes of section 125B(5), the Board is to consist of-
- (a) the Chairman or Vice-Chairman; and
 - (b) 4 other members nominated under subsection (2).
- (2) The secretary must nominate 4 members for the purposes of subsection (1)(b).
- (3) In nominating members under subsection (2), the secretary is subject to the direction of the Chairman or Vice-Chairman.

(Added 78 of 1999 s. 7)

BLIS ON

INTERNET

Section of Enactment

▼
Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE Gazette Number: L.N. 320 of 1999
Section: **125D** Heading: **Parties to an appeal** Version Date: 01/01/2000

The parties to an appeal are the appellant and the licensing authority from whose decision the appeal is brought.

(Added 78 of 1999 s. 7)

BLIS ON

INTERNET

Section of Enactment

▼
Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE Gazette Number: L.N. 320 of 1999
Section: **125E** Heading: **Provisions applicable to a hearing** Version Date: 01/01/2000

- (1) The Chairman or Vice-Chairman is to preside at the hearing of an appeal.
- (2) An appeal board decision shall be taken by a majority.
- (3) If after the commencement of the hearing of an appeal, one or more members (other than the person presiding) are unable to continue, the remaining members, so long as their number (including the person presiding) is not less than 3 may, with the consent of the parties, continue to hear and determine the appeal, and the Board remains duly constituted.
- (4) If the Board is constituted by an even number of members under subsection (3), the person presiding shall have a casting vote when there is an equality of votes.
- (5) Subject to this section and rules made under section 125G the person presiding may determine the procedure at the hearing of an appeal made to the Board.

(Added 78 of 1999 s. 7)

BLIS ON

INTERNET

Section of Enactment

▼
Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE Gazette Number: L.N. 320 of 1999
Section: **125F** Heading: **Board to give reasons for decision** Version Date: 01/01/2000

- (1) The Board must give reasons for its decisions.
- (2) The secretary must serve a copy of the Board's decision and of the reasons for the decision on the parties to an appeal.

(Added 78 of 1999 s. 7)

BLIS ON

INTERNET

Section of Enactment

▼
Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE Gazette Number: L.N. 320 of 1999
Section: **125G** Heading: **Board may make rules** Version Date: 01/01/2000

(1) The Board may make rules regulating the making of appeals to the Board, specifying the documents to be lodged or served in relation to an appeal and providing for the hearing and determining of those appeals and the enforcement of its decisions.

(2) The rules made under subsection (1) are subsidiary legislation.

(Added 78 of 1999 s. 7)

BLIS ON

INTERNET

Section of Enactment

▼
Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE Gazette Number: L.N. 320 of 1999
Section: **125H** Heading: **Meetings of the Board other than appeal hearings** Version Date: 01/01/2000

At a meeting of the Board, other than an appeal hearing or a meeting for the purposes of section 125B(5)-

- (a) the quorum shall be not less than half the members of the Board for the time being;
- (b) the Chairman or Vice-Chairman shall preside;
- (c) decisions are to be made by a majority of the members present and voting; and
- (d) the person presiding has a casting vote.

(Added 78 of 1999 s. 7)

BLIS ON

INTERNET

Section of Enactment

▼
Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE Gazette Number: L.N. 320 of 1999
Section: **125I** Heading: **Staff** Version Date: 01/01/2000

- (1) The Secretary for the Environment and Food may appoint-
 - (a) a secretary to the Board; and
 - (b) such other staff as the Secretary for the Environment and Food considers necessary.
- (2) The Secretary for the Environment and Food may appoint a legal adviser to advise on legal matters relating to an appeal and the legal adviser may be present at any hearing before the Board or deliberations of the Board to so advise the Board.

(Added 78 of 1999 s. 7)

Jurisdiction of the Licensing Appeals Board under new section 125 of Cap. 132(A) Director of Food and Environmental Hygiene as the licensing authority

<u>Licences/permits</u>	<u>Regulations under Cap 132</u>
1. Licence for commercial bathhouses	<i>Commercial Bathhouses Regulation</i>
2. Cremation Permit	<i>Cremation and Gardens of Remembrance Regulation</i>
3. Licence for food business, such as restaurant and factory canteen	<i>Food Business Regulation</i>
4. Licence in relation to funeral parlour business	<i>Funeral Parlours Regulation</i>
5. Hawker Licence	<i>Hawker Regulation</i>
6. Licence for offensive trades	<i>Offensive Trades Regulation</i>
7. Licensing for stalls in private markets	<i>Private Markets Regulation</i>
8. Licence for slaughterhouses	<i>Slaughterhouses Regulation</i>
9. Licence for swimming pool	<i>Swimming Pools Regulation</i>
10. Undertaker's Licence	<i>Undertakers of Burials Regulation</i>
11. Licence for the manufacture of frozen confections	} <i>Frozen Confections Regulation</i>
12. Permit to sell frozen confections	
13. Permit to sell milk / milk beverage	} <i>Milk Regulation</i>
14. Licence for the operation of milk factory	

(B) Director of Leisure and Cultural Services as the licensing authority

<u>Licences/permits</u>	<u>Regulations under Cap 132</u>
15. Billiard Establishment Licence	} <i>Places of Amusement Regulation</i>
16. Public Bowling-Alley Licence	
17. Public Skating Rink Licence	
18. Public Table Tennis Saloon Licence	

LICENSING APPEALS BOARD RULES

(Made by the Licensing Appeals Board under
Section 125G of the Public Health and
Municipal Services Ordinance
(Cap. 132))

1. Commencement

These Rules shall come into operation on a day to be appointed by the Chairman of the Licensing Appeals Board by notice in the Gazette.

2. Interpretation

In these Rules, unless the context otherwise requires—

"appellant" (上訴人) means a person whose notice of appeal is accepted under section 3;

"Board" (委員會), in relation to an appeal, means the Licensing Appeals Board as constituted to hear that appeal under section 125C of the Ordinance;

"Chairman" (主席) means the person appointed as Chairman of the Licensing Appeals Board under section 125A(2)(a) of the Ordinance;

"licensing authority" (發牌當局) means the licensing authority who has made the decision appealed against;

"notice of appeal" (上訴通知書) means the notice of appeal referred to in section 3(1);

"secretary" (秘書) means the person appointed as secretary to the Licensing Appeals Board under section 125I(1)(a) of the Ordinance;

"Vice-Chairman" (副主席) means the person appointed as Vice-Chairman of the Licensing Appeals Board under section 125A(2)(b) of the Ordinance.

3. How appeal is to be commenced

(1) A person exercising a right of appeal under section 125(9) of the Ordinance shall commence the appeal by lodging with the secretary a notice of appeal in Form 1 in the Schedule setting out the grounds of appeal and shall attach to the notice of appeal copies of all documents, if any, on which he intends to rely in support of his appeal.

(2) If a notice of appeal is lodged by a person who has no right of appeal, the secretary shall refer the notice to the Chairman and, if the Chairman directs that the notice is not to be accepted, inform the person accordingly.

4. Service of notice of appeal

The secretary shall, as soon as practicable after a notice of appeal is accepted under section 3, serve a copy of it and copies of any documents attached to it on the licensing authority.

5. Licensing authority to lodge statement and relevant documents

The licensing authority shall, within 28 days after receiving a copy of the notice of appeal served under section 4 or such longer time as may be allowed by the Chairman, lodge with the secretary and serve on the appellant—

- (a) a statement that—
 - (i) sets out its findings on material questions of fact;
 - (ii) refers to the evidence or other material on which those findings were based;
 - (iii) identifies all persons who made representations to the licensing authority regarding the matter in respect of which the decision appealed against was made;
 - (iv) gives the reasons for that decision; and
 - (v) states the policy, if any, based on which the licensing authority made that decision;
- (b) a copy of any other document which is in the possession or under the control of the licensing authority and is considered by that authority to be relevant to the appeal.

6. Further document or material

- (a) The Chairman, before the Board is constituted to hear the appeal; or
- (b) The Board, after it is constituted to hear the appeal,

may by notice in writing direct the appellant or the licensing authority to furnish to the Chairman or the Board, as the case may be, any document or material in the possession or under the control of that appellant or that licensing authority which is considered by the Chairman or the Board, as the case may be, to be relevant to the appeal.

7. Date, time and place of hearing

(1) The secretary shall fix the date, time and place for hearing an appeal in consultation with the Chairman, or if the Vice-Chairman is to preside at the hearing, in consultation with the Vice-Chairman.

(2) The secretary shall serve on the appellant and the licensing authority a notice of date, time and place for hearing in Form 2 in the Schedule at least 14 days before the date fixed for the hearing.

8. Making representations at hearing

The Board may—

- (a) upon the written request of either party to an appeal, invite any person who may be affected by the decision of the Board; or
- (b) on its own motion, invite any person identified under section 5(a)(iii),

by serving on that person a notice in writing, to make representations at the hearing of the appeal.

9. Appearance before Board

The parties to an appeal may be present at the hearing of the appeal and make submission either in person or by an authorized representative.

10. Hearing to be in public except in special circumstances

(1) Subject to subsection (2), the hearing of an appeal shall be in public.

(2) Where the Board after consulting the parties to the appeal is satisfied that it is desirable to do so, it may by order direct that the whole or part of the hearing shall take place in private and give directions as to the persons who may be present.

11. Language

(1) The hearing of an appeal may be conducted in Chinese or English or both as the Board thinks fit.

(2) Notwithstanding subsection (1)—

- (a) a party to an appeal or his authorized representative may address the Board in any language;
- (b) a person invited to make representations under section 8 may address the Board in any language;
- (c) a witness may give evidence before the Board in any language.

12. Abandonment of appeal

(1) The appellant may abandon the appeal or any of the grounds of the appeal before the hearing of the appeal by notice in writing lodged with the secretary.

(2) An appellant who lodges a notice under subsection (1) shall at the same time serve a copy of the notice on the licensing authority.

13. Absence from hearing

If a party to an appeal fails to attend the hearing of the appeal either in person or by his authorized representative on the date and at the time fixed, the Board may—

- (a) if it is satisfied that his failure to appear is due to reasonable cause, adjourn the hearing to a date and time as it thinks fit; or
- (b) proceed to hear the appeal in his absence.

14. Decision of Board

The Board may order its decision to come into operation immediately or on a specified date.

15. Service

Any document, notice or thing required to be served, lodged or furnished to any person under these Rules shall be duly served, lodged or furnished if—

- (a) in the case of the secretary, the Chairman or the Board, it is left at or sent to the office of the secretary;
- (b) in the case of a person who is a body corporate—
 - (i) it is sent by registered post addressed to the body at its registered office in Hong Kong or at any place in Hong Kong at which the body carries on business; or
 - (ii) it is delivered to any place in Hong Kong at which the body carries on business and given to a person apparently concerned in the management of, or apparently employed by, the body;
- (c) in the case of a person who is not a body corporate—
 - (i) it is sent by registered post addressed to the last known address of the person; or
 - (ii) it is delivered to the person personally.

SCHEDULE

[ss. 3 & 7]

FORM 1

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)

(Section 3(1) of the Licensing Appeals Board Rules (L.N. 43 of 2000))

NOTICE OF APPEAL

To: The Secretary, Licensing Appeals Board

1. Full name of Appellant:..... (Chinese) (English)

2. Address of Appellant:.....

Telephone No. of Appellant:

3. Address of Appellant for service of documents (if different from the above):
.....

4. Details of decision appealed against:
(attach a copy of the decision issued by the licensing authority and indicate the particular aspect(s) being the subject of the appeal)
.....
.....
.....

5. The grounds for this appeal are: (set them out in full)
.....
.....
.....

Dated this day of20

.....
(Signature of Appellant)

Note: You are required to attach to this notice copies of all documents, if any, on which you intend to rely in support of your appeal.

FORM 2

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)

(Section 7 of the Licensing Appeals Board Rules (L.N. 43 of 2000))

NOTICE OF DATE, TIME AND PLACE FIXED
FOR HEARING OF AN APPEAL

Appeal No.: of 20

In the matter of the Appeal lodged by
(Appellant) against the decision of under
..... on theday of

To:(Appellant)
And to(licensing authority)

TAKE NOTICE that the above appeal will be heard at
.....
on the day of 20 at a.m./p.m.

TAKE NOTICE that if you do not attend at the time and place mentioned, either in person or by a person duly authorized to appear on your behalf, the appeal may be adjourned for reasonable cause or may be heard in your absence.

Dated this day of20

.....
Secretary, Licensing Appeals Board

IP Kwok-chung
Chairman,
Licensing Appeals Board

10 February 2000

Explanatory Note

These Rules—

- (a) regulate the making of appeals to the Licensing Appeals Board;
- (b) specify the documents to be lodged or served in relation to an appeal;
and
- (c) provide for the hearing and determining of those appeals.