

LN043-E

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 of 20.....

(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 the day 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 of 20.....

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.