

C007-E

Amend the Public Health and Municipal Services Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Public Health and Municipal Services (Amendment) Ordinance 2001.

2. Power to close premises used in
contravention of provisions
of Ordinance

Section 128 of the Public Health and Municipal Services Ordinance (Cap. 132) is amended---

(a) in subsection (1), by repealing "Where" and substituting "Subject to subsection (1B), where";

(b) by adding---

"(1B) This section does not apply to any premises to which sections 128A, 128B and 128C apply.".

3. Sections added

The following are added---

"128A. Application and interpretation of this section and sections 128B and 128C

(1) This section and sections 128B and 128C apply to---

(a) any premises used as food premises that are required to be licensed under the Food Business Regulation (Cap. 132 sub. leg.);

(b) any premises on or from which any restricted food specified in Schedule 2 to the Food Business Regulation (Cap. 132 sub. leg.) is sold or offered or exposed for sale;

(c) any premises used as a slaughterhouse that is required to be licensed under the Slaughterhouses Regulation (Cap. 132 sub. leg.);

(d) any premises on which there is carried on a business as a milk factory as mentioned in regulation 14(2) of the Milk Regulation (Cap. 132 sub. leg.);

(e) any premises on which any frozen confection as defined in section 3 of the Frozen Confections Regulation (Cap. 132 sub. leg.) is manufactured.

(2) For the purposes of this section and sections 128B and 128C, unless the context otherwise requires---

"closed premises" (已封處所) means any premises mentioned in subsection (1) in respect of which a closure order has come into force and remains in force;

"closure order" (封閉令) means an order made under section 128B(1) or 128C(1), as the case may be;

"immediate health hazard" (對健康的即時危害) means any circumstances that cause or

are likely to cause any food supplied from or handled or sold on any premises to be or to become a source of food-borne infection, contamination, intoxication or disease transmission;

"premises" (處所) includes any place, vessel and any part of a place or vessel.

(3) The circumstances referred to in the definition of "immediate health hazard" include the following---

(a) because of the location, construction or state of the premises, the condition of the premises is such that it renders any food supplied from or handled or sold on the premises to be so contaminated or tainted that it is unfit for human consumption;

(b) the water used in preparing food or in washing utensils comes from a contaminated or unapproved source, rendering any food supplied from or handled or sold on the premises to be unfit for human consumption;

(c) as shown from inspection findings, data from epidemiological investigation or other laboratory evidence, any food supplied from or handled or sold on the premises is contaminated with pathogens, biotoxins, chemicals or other substances rendering the food unfit for human consumption; and

(d) the premises are infested with vermin to such extent that any food supplied from or handled or sold on the premises is contaminated or tainted, and becomes unfit for human consumption.

128B. Power to close premises used without licence, permit or permission

(1) Where under the Food Business Regulation (Cap. 132 sub. leg.), the Frozen Confections Regulation (Cap. 132 sub. leg.), the Milk Regulation (Cap. 132 sub. leg.) or the Slaughterhouses Regulation (Cap. 132 sub. leg.)---

(a) the use of any premises to which this section applies; or

(b) any activity mentioned in section 128A(1),

is required to be licensed or permitted, a court on application by the Authority and on proof that the premises are so used or the activity is conducted (as the case may be) on any premises without the requisite licence, permit or permission shall, subject to subsection (2), make a closure order in Form H in the Seventh Schedule.

(2) The court shall not make a closure order unless it is satisfied that---

(a) a notice of intention to apply for the closure order, in both English and Chinese, was affixed at a conspicuous place on the premises at least 7 days before the date fixed for the hearing of the application;

(b) the notice stated the time and place set for the hearing of the application and advised that any person having a reasonable cause to be heard on the application was entitled to appear at the hearing and request to be heard; and

(c) every person having a reasonable cause to be heard on the application and requesting to be heard has had an opportunity to be heard.

(3) At the place and time set for the hearing of an application made under subsection (1) or such other time as soon as practicable thereafter, the court shall hear the applicant and every person who---

(a) is present at the hearing;

(b) has a reasonable cause to be heard; and

(c) wishes to be heard,

and then proceed to make a decision.

(4) A closure order shall not operate to---

(a) prevent human habitation on the premises other than habitation by a servant, watchman or caretaker employed by the person having the management or control of the premises immediately before the order is affixed on the premises under subsection (5); or

(b) affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.

(5) A closure order comes into force on the beginning of the 8th day after the day on which a copy of it is affixed at a conspicuous place on the premises in respect of which it is made.

(6) A closure order shall remain in force until the court rescinds it on application by the Authority or any person having an interest in the premises in respect of which the order is made.

(7) The court shall rescind a closure order if it is satisfied that---

(a) the use of the premises or the activity in respect of which the order has been made has been licensed or permitted under any of the subsidiary legislation mentioned in subsection (1); or

(b) the premises will not be used for any purpose mentioned in section 128A(1) and no activity mentioned in subsection (1) will be conducted on the premises in contravention of any of the subsidiary legislation mentioned in subsection (1).

(8) Subject to subsection (4), when a closure order in respect of any premises comes into force, the Authority shall lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the premises and may disconnect or cause to be disconnected all gas, water and electricity supplies to those premises.

(9) Subject to subsection (10), no person, other than a public officer in the course of his duty, may enter or remain on any closed premises.

(10) The Authority may---

(a) permit in writing any person to enter and remain on any closed premises for such purpose as is specified in the permission;

- (b) impose such conditions on the permission as he thinks fit;
- (c) revoke the permission if he thinks that the purpose for which the permission was granted no longer exists or any condition imposed under paragraph (b) has been breached;
- (d) request any person found on any closed premises to leave the premises, and if the person refuses to leave, remove the person from the premises with or without the assistance of police officers and use such force as is reasonably necessary.

(11) Any person who, without lawful authority or reasonable excuse---

- (a) removes or defaces any copy of a closure order affixed under subsection (5);
 - (b) breaks or interferes with any lock or seal made under subsection (8) ; or
 - (c) contravenes subsection (9),
- commits an offence.

(12) The Authority may---

(a) dispose of---

(i) any article or thing or any perishable food found on any closed premises that requires to be immediately disposed of as he thinks fit;

(ii) any live bird, fish or animal that is found on the premises as he thinks fit;

(b) remove---

(i) any article, thing or food found on any closed premises that is likely to create a fire hazard or constitute a danger to life or health if left on the premises;

(ii) any live bird, fish or animal found on the premises;

(c) make such arrangements with regard to any live bird, fish or animal removed under paragraph (b) as he thinks fit;

(d) affix a notice in both English and Chinese at a conspicuous place on the closed premises---

(i) setting out the details of any article, thing, food, live bird, fish or animal removed under paragraph (b) that he thinks can be returned; and

(ii) calling for the submission to him of any claim for the return of such article, thing, food, live bird, fish or animal within 7 days of the affixing of the notice.

(13) Where a claim mentioned in subsection (12)(d)(ii) is made, the Authority---

(a) shall refuse to return the article, thing, food, live bird, fish or animal if he is not satisfied that the claimant is either the owner or a person entitled to the possession of it or the live bird, fish or animal is dead; or

(b) may return the article, thing, food, live bird, fish or animal as claimed and recover as a civil debt from a claimant to whom it is returned any expenses incurred in the removal and storage of it or in any arrangement made in respect of it.

(14) Any article, thing, food, live bird, fish or animal removed by the Authority under subsection (12)(b) and not claimed within the time specified in subsection (12)(d)(ii), or which the Authority refuses to return in accordance with subsection (13)(a), may be sold by public auction or, upon the order of a court, otherwise sold or disposed of as the court directs, and any proceeds arising from the sale shall be retained by the Authority and applied in payment of any expenses incurred in connection with the enforcement of the closure order and the surplus (if any) paid, on demand made within 90 days of the sale, to the owner of the article, thing, food, live bird, fish or animal.

(15) Any surplus not demanded in accordance with subsection (14) shall be paid into the general revenue.

(16) The Authority may recover as a civil debt from the person having the management or control of any premises (or the master of the vessel if the premises are a vessel or any part of a vessel) immediately before the closure order in respect of the premises came into force the cost of---

(a) any work carried out on the premises under subsection (8);

(b) removing any article, thing, food, live bird, fish or animal from the closed premises under subsection (12)(b); and

(c) any arrangements made under subsection (12)(c),

which is not met out of the proceeds of any sale under subsection (14).

128C. Power to close premises posing immediate health hazard

(1) If the Authority has reasonable cause to believe that the use of any premises to which this section applies or any activity conducted on those premises to which this section applies poses an immediate health hazard, he may make a closure order in Form I in the Seventh Schedule to close the premises immediately.

(2) A closure order shall not operate to---

(a) prevent human habitation on the premises other than habitation by a servant, watchman or caretaker employed by the person having the management or control of the premises immediately before the order comes into force; or

(b) affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.

(3) A closure order comes into force immediately after a copy of it is affixed at a conspicuous place on the premises in respect of which it is made.

(4) A closure order shall remain in force until a notice is issued by the Authority made under subsection (6).

(5) Any person having an interest in any premises in respect of which a closure order has been made may apply in writing to the Authority to rescind the order.

(6) Whether or not an application has been made under subsection (5), if the Authority is satisfied that---

(a) in respect of any premises in respect of which a closure order has been made, the immediate health hazard has been eliminated and the use of the premises or the activity to be conducted on the premises has been licensed or permitted under any of the subsidiary legislation mentioned in section 128B(1); or

(b) the premises will not be used for any purpose mentioned in section 128A(1) and no activity mentioned in section 128A(1) will be conducted on the premises in contravention of any of the subsidiary legislation mentioned in section 128A(1), the Authority shall issue a notice in Form J in the Seventh Schedule to rescind the closure order with immediate effect.

(7) If the Authority refuses to issue a notice under subsection (6) as applied, he shall serve a notice of his refusal on the applicant and the applicant may, within 7 days of such service or such longer time as the court may allow, appeal to the court against the Authority's decision.

(8) On an appeal under subsection (7) the court shall either confirm the Authority's decision or order the Authority to issue a notice under subsection (6).

(9) The lodging of an appeal under subsection (7) does not operate as a stay of execution of a closure order unless the court otherwise orders.

(10) The decision of the court under subsection (8) is final.

(11) Subject to subsection (2), when a closure order in respect of any premises comes into force, the Authority shall lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the closed premises and may disconnect or cause to be disconnected all gas, water and electricity supplies to those premises.

(12) Subject to subsection (13), no person, other than a public officer in the course of his duty, may enter or remain on any closed premises.

(13) The Authority may---

(a) permit in writing any person to enter and remain on any closed premises for such purpose as is specified in the permission;

(b) impose such conditions on the permission as he thinks fit;

(c) revoke the permission if he thinks that the purpose for which the permission was granted no longer exists or any condition imposed under paragraph (b) has been breached;

(d) request any person found on any closed premises to leave the premises, and if the person refuses to leave, remove the person from the premises with or without the assistance of police officers and use such force as is reasonably necessary.

(14) Any person who, without lawful authority or reasonable excuse---

(a) removes or defaces any copy of a closure order affixed under subsection (3);

(b) breaks or interferes with any lock or seal made under subsection (11); or
(c) contravenes subsection (12),
commits an offence.

(15) The Authority may---

(a) dispose of---

(i) any article or thing or any perishable food found on any closed premises that requires to be immediately disposed of as he thinks fit;

(ii) any live bird, fish or animal found on the premises as he thinks fit;

(b) remove---

(i) any article, thing or food, found on any closed premises that is likely to create a fire hazard or constitute a danger to life or health if left on them;

(ii) any live bird, fish or animal found on the premises;

(c) make such arrangements with regard to any live bird, fish or animal removed under paragraph (b) as he thinks fit;

(d) affix a notice in both English and Chinese at a conspicuous place on the closed premises---

(i) setting out the details of any article, thing, food, live bird, fish or animal removed under paragraph (b) that he thinks can be returned; and

(ii) calling for the submission to him of any claim for the return of such article, thing, food, live bird, fish or animal within 7 days of the affixing of the notice.

(16) Where a claim mentioned in subsection (15)(d)(ii) is made, the Authority---

(a) shall refuse to return the article, thing, food, live bird, fish or animal if he is not satisfied that the claimant is either the owner or a person entitled to the possession of it or the live bird, fish or animal is dead; or

(b) may return the article, thing, food, live bird, fish or animal as claimed and recover as a civil debt from a claimant to whom it is returned any expenses incurred in the removal or storage of it or in any arrangement.

(17) Any article, thing, food, live bird, fish or animal removed by the Authority under subsection (15)(b) and not claimed within the time specified in subsection (15)(d)(ii), or which the Authority refuses to return in accordance with subsection (16)(a), may be sold by public auction or, upon the order of a court, otherwise sold or disposed of as the court directs, and any proceeds arising from the sale shall be retained by the Authority and applied in payment of any expenses incurred in connection with the enforcement of the closure order and the surplus (if any) paid, on demand made within 90 days of the sale, to the owner of the article, thing, food, live bird, fish or animal.

(18) Any surplus not demanded in accordance with subsection (17) shall be paid

into the general revenue.

(19) The Authority may recover as a civil debt from the person having the management or control of any premises (or the master of the vessel if the premises are a vessel or any part of a vessel) immediately before the closure order in respect of the premises came into force the cost of---

(a) any work carried out on the premises under subsection (11);

(b) removing any article, thing, food, live bird, fish or animal from the closed premises under subsection (15)(b); and

(c) any arrangements made under subsection (15)(c),

which is not met out of the proceeds of any sale under subsection (17).

(20) A person who is aggrieved by an order made under subsection (1) may, within 7 days after the day on which the order was made or such longer time as the court may allow, appeal to the court against the order.

(21) On an appeal made under subsection (20) the court may confirm, suspend or disallow the order.

(22) The lodging of an appeal under subsection (20) does not operate as a stay of execution of a closure order unless the court otherwise orders.

(23) The decision of the court under subsection (21) is final."

4. Designated Authorities

The Third Schedule is amended by adding---

"128B Director of Food and Environmental Hygiene

128C Director of Food and Environmental Hygiene".

5. Names in which proceedings for offences

may be brought under section 131(1)

The Sixth Schedule is amended by adding---

"128B Director of Food and Environmental Hygiene

128C Director of Food and Environmental Hygiene".

6. Forms

The Seventh Schedule is amended by adding---

"Form H [s. 128B(1)]

Public Health and Municipal Services Ordinance

(Chapter 132)

(section 128B(1))

Closure Order

TO the Director of Food and Environmental Hygiene.

You have applied to me for a closure order in respect of the premises situated
at
.....

/vessel* on the ground that the premises are/vessel is*
used/certain activity is conducted* on the premises/in the vessel* without a licence,
permit or permission under the Public Health and Municipal Services Ordinance (Cap.
132) ("the Ordinance");

NOW on proof to my satisfaction of this ground and that a notice of intention
to apply for this order was affixed at a conspicuous place on the premises/vessel*
as required by section 128B(2) of the Ordinance, I DO, in exercise of my powers under
section 128B(1) of the Ordinance, authorize you, subject to the requirement of section
128B(5) of the Ordinance, to close the premises/vessel* in the manner prescribed by
the Ordinance.

Dated this day of ,

[L.S.]

(Signed)

Magistrate.

Note: 1. It is an offence for any unauthorized person to enter or remain on the
premises/in the vessel* to which this order relates after it has come into force.
The penalties are a fine at level 6 and imprisonment for 12 months and a fine of \$1,750
for each day during which the offence continues.

2. The penalties for removing or defacing a copy of this order affixed to any
premises/vessel* or for breaking or interfering with any lock or seal made or caused
to be made by the Director on the premises/in the vessel* without lawful authority
or reasonable excuse are a fine at level 4 and imprisonment for 6 months.

* Delete as appropriate.

Form I [s. 128C(1)]

Public Health and Municipal Services Ordinance

(Chapter 132)

(section 128C(1))

Closure Order

TO the occupier of the premises situated

at

.....

..... /master of the

vessel

.....

.....*

NOW on proof to my satisfaction that an immediate health hazard exists on the
premises/in the vessel/in of the vessel*, I DO, in exercise of my

powers under section 128C(1) of the Public Health and Municipal Services Ordinance (Cap. 132) ("the Ordinance"), order to close the premises/vessel/that part of the vessel* with immediate effect in the manner prescribed by the Ordinance.

The details of the immediate health hazard are:

This order remains in force until a notice to rescind it is issued by me upon proof to my satisfaction that---

(a) the immediate health hazard on the premises/in the vessel/in that part of the vessel* has been eliminated and the use of the premises/vessel/that part of the vessel/the activity* has been licensed or permitted; or

(b) the premises/vessel/that part of the vessel* will not be used for a purpose that requires a licence, permit or permission under any subsidiary legislation mentioned in section 128A(1) of the Ordinance and no activity mentioned in that section will be conducted on the premises.

Any person who feels aggrieved by this order may, within 7 days after the day on which this order was made or such longer time as the court may allow, appeal to the court to seek legal remedy.

Dated this day of ,

(Signed)

Director of Food and Environmental Hygiene.

Note: 1. It is an offence for any unauthorized person to enter or remain on the premises/in the vessel* to which this order relates after it has come into force. The penalties are a fine at level 6 and imprisonment for 12 months and a fine of \$1,750 for each day during which the offence continues.

2. The penalties for removing or defacing a copy of this order affixed to any premises/vessel* or for breaking or interfering with any lock or seal made or caused to be made by the Director on the premises/in the vessel* without lawful authority or reasonable excuse are a fine at level 4 and imprisonment for 6 months.

* Delete as appropriate.

Form J [s. 128C(6)]

Public Health and Municipal Services Ordinance

(Chapter 132)

(section 128C(6))

Notice of Rescission of Closure Order

TO the occupier of the premises situated

at

.....

/master of the vessel*

NOW on proof to my satisfaction that---

- (a) the immediate health hazard on the premises/in the vessel/in the
of the vessel* has been eliminated and the use of/activity conducted on* the
premises/vessel/that part of the vessel* has been licensed or permitted; or
(b) the premises/vessel/that part of the vessel* will not be used for a purpose that
requires a licence, permit or permission under any subsidiary legislation mentioned
in section 128A(1) of the Public Health and Municipal Services Ordinance (Cap. 132)
("the Ordinance") and no activity mentioned in that section will be conducted on the
premises.

I DO, in exercise of my powers under section 128C(6) of the Ordinance, rescind the
closure order in respect of the premises/vessel/that part of the vessel* with
immediate effect.

Dated this day of ,

(Signed)

Director of Food and Environmental Hygiene.

* Delete as appropriate."

7. Penalties

The Ninth Schedule is amended by adding---

- "128B(11)(c) level 6 and 12 months \$1,750 fine
and 128C(14)(c) imprisonment
128B(11)(a) level 4 and 6 months ---".
and (b) and imprisonment
128C(14)(a)
and (b)

8. Transitional

(1) Any proceedings in respect of any offence under section 128 of the Public
Health and Municipal Services Ordinance (Cap. 132) committed or alleged to have been
committed before the commencement of the Public Health and Municipal Services
(Amendment) Ordinance 2001 (of 2001) ("the amending Ordinance") may be instituted,
continued or enforced, and any penalty, forfeiture or punishment incurred in respect
of such offence may be imposed, as if the amending Ordinance had not been enacted.

(2) Nothing in the amending Ordinance affects the validity of a Closure Order
issued under section 128 of the Public Health and Municipal Services Ordinance (Cap.
132) before the commencement of the amending Ordinance.

Explanatory Memorandum

The object of this Bill is to amend the Public Health and Municipal Services
Ordinance (Cap. 132) ("the principal Ordinance") to provide for---

- (a) the making of closure orders in respect of premises used for certain food business

purposes without licence, permit or permission;

(b) an expedited procedure to make closure orders where the use of premises for certain food business purposes constitutes an immediate health hazard.

2. Clause 1 contains the short title of the Bill.

3. Clause 2 amends section 128 of the principal Ordinance to provide that that section shall not apply to premises to which this Ordinance applies.

4. Clause 3 adds 3 new sections to the principal Ordinance---

(a) new section 128A defines the application of the new sections and contains certain definitions of expressions used in those sections;

(b) new section 128B provides that where premises are used for certain food business purposes without the requisite licence, permit or permission, the court may, on the application of the Director of Food and Environmental Hygiene ("the Director"), make a closure order in respect of the premises. It also lays down the conditions and procedure leading to the making and rescission of a closure order, the powers of the Director and the disposal of things found on closed premises. This new section also makes it an offence for any person who, without lawful authority or reasonable excuse, enters or remains on closed premises, breaks a lock or seal made to closed premises or removes or defaces any copy of a closure order affixed at closed premises;

(c) new section 128C empowers the Director to make an immediate closure order in respect of any premises the use of which for certain food business purposes constitutes an immediate health hazard. It also contains administrative and penal provisions similar to those of new section 128B. It also provides for appeal to the court against the Authority's decision.

5. Clause 4 amends the Third Schedule to the principal Ordinance to designate the Director as the Authority for the purpose of new sections 128B and 128C.

6. Clause 5 amends the Sixth Schedule to the principal Ordinance to enable proceedings for offences under new sections 128B and 128C to be brought in the name of the Director.

7. Clause 6 adds the necessary forms for the purposes of new sections 128B and 128C.

8. Clause 7 specifies the penalties for offences under the new sections.

9. Clause 8 contains 2 transitional provisions.