

**For discussion  
on 3 January 2003**

**Subcommittee on  
Appeal Board on Closure Orders (Immediate Health Hazard) Rules**

**Purpose**

This paper briefs Members on the background of the Appeal Board on Closure Orders (Immediate Health Hazard) and its operation.

**Background**

2. The Public Health and Municipal Services (PHMS) (Amendment) Ordinance 2002 was enacted by the Legislative Council on 23 January 2002. This Ordinance seeks to expedite the process for closing unlicensed food establishments and to empower the Director of Food and Environmental Hygiene (DFEH) to close unhygienic food establishments the use of which poses immediate health hazard. The Secretary for Health, Welfare and Food (SHWF) has appointed 14 February 2003 as the commencement date of this Ordinance.

3. Section 128D of the PHMS Ordinance provides for the establishment of the Appeal Board on Closure Orders (Immediate Health Hazard). The functions of this Appeal Board are to hear and determine appeals made against DFEH's decision to make a closure order or his refusal to rescind a closure order under section 128C of the PHMS Ordinance.

**Constitution of the Appeal Board and its Secretariat**

4. Pursuant to sections 128D(3), (4) & (5) of the PHMS Ordinance, the Chief Executive has appointed a Chairman and 2 Deputy Chairmen of the Appeal Board and 22 other personalities as its members. The Board's membership was drawn from a wide cross-section of the community and comprises professionals in legal, medical and accounting

fields, academics, businessmen, representatives from the catering trade. These appointments were gazetted on 15 November 2002 and will last for 3 years. A copy of the gazette notice is at [Annex A](#).

5. In accordance with section 128D(6) of the PHMS Ordinance, SHWF has appointed a Principal Assistant Secretary and a Senior Executive Officer from the Health, Welfare and Food Bureau to provide secretariat support to the Appeal Board. They will be assisted by a few supporting staff from the same Bureau during actual operation of the Board.

### **The Appeal Rules**

6. Section 128D(20) provides that the Chairman of the Appeal Board may, in consultation with the Secretary for Health, Welfare and Food, make rules:-

- (a) regulating the making of appeals;
- (b) specifying the documents to be lodged or served; and
- (c) providing for the hearing and determination of appeals and the enforcement of the Board's decisions.

The Appeal Board on Closure Order (Immediate Health Hazard) Rules, hereinafter referred to as "the Rules", were published in the Gazette on 6 December 2002 and were subsequently tabled in the Legislative Council on 11 December 2002. A copy of the Rules is at [Annex B](#).

7. The Rules were modelled on the Licensing Appeals Board Rules made under section 125G of the PHMS Ordinance and have accommodated LegCo Members' request that an independent, simple and effective mechanism be provided for the aggrieved to appeal against closure orders/refusal notices made by DFEH under section 128C.

### **Operation of the Appeal Board**

8. Within 7 days after a closure order or a refusal to rescind a closure order is issued, the aggrieved person(s) may appeal against DFEH's decision by serving a notice of appeal on the Chairman of the

Appeal Board. The secretary to the Appeal Board shall, within 3 clear working days after a notice of appeal is served, fix the date, time and place for hearing the appeal. A hearing will normally be held within 10 clear working days after the receipt of the notice of appeal. The Chairman or a Deputy Chairman together with 2 other members of the Appeal Board appointed by the Chairman will hear and determine the appeal. The timing of various steps leading to an appeal hearing is shown at Annex C.

9. The Rules and the Appeal Board will come into operation on 14 February 2003. Before then, we will introduce a number of administrative measures to facilitate the lodging of appeals with the Secretariat of the Appeal Board. First, we will request DFEH to categorically remind the recipient of a closure order/refusal notice of his right to appeal and to attach the notice of appeal at Annex D when issuing the closure order/refusal notice. Second, we will issue a press release in early February 2003 to remind food business premises licensees of the commencement of operation of the Appeal Board. The procedural steps for lodging appeals with the Secretariat will be highlighted in this press release. Third, we will publicise the contact details of the Secretariat by uploading them onto the website of the Health, Welfare and Food Bureau.

**Health, Welfare and Food Bureau**  
**December 2002**

G.N. 7244

## PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (Chapter 132)

## APPEAL BOARD ON CLOSURE ORDERS (IMMEDIATE HEALTH HAZARD)

It is hereby notified that, in exercise of the powers conferred by sections 128D(3) and 128D(4) of the Public Health and Municipal Services Ordinance (Chapter 132), the Chief Executive the Honourable TUNG Chee Hwa has made the following appointments to the Appeal Board on Closure Orders (Immediate Health Hazard) from 15 November 2002 to 14 November 2005.

- Chairman* : Mrs. YEW KUIN King-suk, Lily
- Deputy Chairman*: Ms. LEE Wai-yin, Angela  
Ms. Vivien CHAN, J.P.
- Members* : Dr. CHAN Pui-kwong  
Mr. CHAN Wai-chung  
Ms. Cordelia CHUNG  
Dr. FOO Kam-so, Stephen  
Professor Margaret IP  
Mr. Wilson KWOK  
Ms. KWONG Sum-yea, Anna  
Mr. LAI Tai-sang, David, M.H.  
Mr. LAM Hoi-ham, J.P.  
Mr. LEE Chee-wah, Wilfred  
Mr. LEE Luen-wai, John  
Mr. LEE Shung-tak, Peter, B.B.S., J.P.  
Dr. SHING Shiu-ching, Elizabeth, J.P.  
Dr. Richard TAN  
Mr. TAO Kwok-lau, Clement, B.B.S., J.P.  
Professor VRUMOED KWAN Lee-ping, Lilian  
Mr. WONG Hin-lee  
Mr. WONG Lung-tak, Patrick, J.P.  
Ms. WONG Ying-kay, Ada, J.P.  
Mr. YEUNG Koon-yat, M.H.  
Ms. Drina YUE  
Professor YUEN Kwok-yung, J.P.

15 November 2002

YEOH Eng-kiong *Secretary for Health, Welfare and Food*

**APPEAL BOARD ON CLOSURE ORDERS (IMMEDIATE  
HEALTH HAZARD) RULES**

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## **APPEAL BOARD ON CLOSURE ORDERS (IMMEDIATE HEALTH HAZARD) RULES**

(Made by the Chairman of the Appeal Board on Closure Orders (Immediate Health Hazard) under section 128D(20) of the Public Health and Municipal Services Ordinance (Cap. 132) in consultation with the Secretary for Health, Welfare and Food)

### **1. Commencement**

These Rules shall come into operation on 14 February 2003.

### **2. Interpretation**

In these Rules, unless the context otherwise requires –

“Appeal Board” (上訴委員會) has the meaning specified in section 128A(2) of the Ordinance;

“appellant” (上訴人) means a person who serves a notice of appeal under section 3;

“Authority” (主管當局) means the Director of Food and Environmental Hygiene;

“Chairman” (主席) has the meaning specified in section 128A(2) of the Ordinance;

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

“secretary” (秘書) means the person appointed as secretary to the Appeal Board under section 128D(6)(a) of the Ordinance;

“working day” (工作日) means any day other than –

- (a) a public holiday; or
- (b) a gale warning day or black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

### **3. How appeal is to be commenced**

A person exercising a right of appeal under section 128C(7) or (18) of the Ordinance shall –

- (a) commence the appeal by serving on the Chairman a notice of appeal in Form 1 in the Schedule setting out the grounds of appeal; and
- (b) attach to the notice of appeal copies of all documents, if any, on which he intends to rely in support of his appeal.

### **4. Service of notice of appeal**

The secretary shall, within one clear working day after a notice of appeal is served under section 3, serve a copy of it and copies of any documents attached to it on –

- (a) the Authority; and
- (b) any other person (other than the appellant) who is bound by the Authority's decision or order which is the subject matter of the appeal.

### **5. Authority to serve statement and relevant documents**

The Authority shall, within 3 clear working days after receiving a copy of the notice of appeal served under section 4, serve on the secretary and the appellant –

- (a) a statement that –
  - (i) sets out the decision or order which is the subject matter of the appeal and the reasons for the decision or order;
  - (ii) sets out its findings on material questions of fact;
  - (iii) refers to the evidence or other material on which those findings were based;

- (iv) identifies all persons who have made representations to the Authority within one month before the making of the decision or order which is the subject matter of the appeal regarding the matter in respect of which the decision or order was made; and
  - (v) states the policy, if any, based on which the Authority made the decision or order; and
- (b) copies of all documents, if any, which are in the possession or under the control of the Authority and are considered by the Authority to be relevant to the appeal.

**6. Further documents, representations or material**

(1) The appellant may, at least 3 clear working days before the date fixed for the hearing of an appeal under section 7 serve on –

- (a) the secretary; and
- (b) the Authority and any other person referred to in section 4(b),

any further document, representation or material which is relevant to the appeal.

(2) The person who is to preside at the hearing of an appeal may by order require the appellant, the Authority or any other person referred to in section 4(b) to produce any document or material in their respective possession or under their respective control and which is considered by the person who is to preside at the hearing to be relevant to the appeal.

**7. Date, time and place of hearing**

(1) The secretary shall, within 3 clear working days after a notice of appeal is served under section 3 –



- (a) fix the date, time and place for hearing an appeal in consultation with the person who is to preside at the hearing of the appeal; and
  - (b) serve on the appellant and the Authority a notice of the date, time and place for hearing in Form 2 in the Schedule.
- (2) The secretary shall, so far as reasonably practicable, fix the hearing date –
- (a) on a date which is within 10 clear working days after the receipt of the notice of appeal served under section 3; or
  - (b) on such date as the Chairman may deem fit.

#### **8. Making representations at hearing**

The person who is to preside at the hearing of an appeal may –

- (a) upon the written request of either party to the appeal made at least 3 clear working days before the date fixed for the hearing of the appeal under section 7, invite any person who may be affected by the decision of the Appeal Board; or
- (b) on its own motion, invite any person identified under section 5(a)(iv),

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

#### **9. Hearing to be in public except in special circumstances**

- (1) Subject to subsection (2), the hearing of an appeal shall be in public.
- (2) The Appeal Board may by order direct that the whole or part of the hearing of an appeal shall take place in private where –

- (a) the parties to the appeal have mutually agreed to waive the right to public hearing as provided by article 10 of the Bill of Rights; or
- (b) any party to the appeal applies on any of the grounds provided in article 10 of the Bill of Rights to hear the whole or part of the hearing in private and the Appeal Board considers it appropriate to do so.

(3) In this section, "Bill of Rights" (人權法案) means the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

#### **10. Language**

(1) The hearing of an appeal may be conducted in Chinese or English or both as the person who is to preside at the hearing of the appeal thinks fit.

(2) Notwithstanding subsection (1), a party to an appeal, his authorized representative or any person invited to make representations under section 8, may address the Appeal Board in any language.

#### **11. Abandonment of appeal**

(1) The appellant may, at any time before the hearing of the appeal, abandon the appeal or any grounds of the appeal by notice in writing served on the secretary.

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

#### **12. Absence from hearing**

(1) If either party to an appeal fails to attend the hearing of the appeal in person or by his authorized representative on the date, time and place fixed, the Appeal Board may –

- (a) if it is satisfied that his failure to appear is due to reasonable cause, adjourn the hearing to a date, time and place as it thinks fit; or
- (b) proceed to hear the appeal in the absence of either party to the appeal and make a decision under section 128D(13)(b) of the Ordinance.

(2) Where the date, time and place fixed for the hearing is adjourned under subsection (1)(a), the secretary shall, within one clear working day after the adjournment, serve on the appellant and the Authority a notice of the date, time and place for hearing in Form 3 in the Schedule.

### 13. Decision of Appeal Board

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

### 14. Mode of service

Any document, notice, order, material or thing required to be served on any person under these Rules shall be effected –

- (a) in the case of the Chairman –
  - (i) by delivery to him by hand ; or
  - (ii) by leaving it at the office of the secretary;
- (b) in the case of the secretary –
  - (i) by delivery to him by hand; or
  - (ii) by leaving it at or by sending it through registered post to, the office of the secretary;
- (c) in the case of the Authority –
  - (i) by delivery to him by hand; or
  - (ii) by leaving it at or by sending it through registered post to, the office of the Authority;
- (d) in the case of an appellant which is a body corporate –

- (i) by delivery to the chairman, president, clerk, secretary, treasurer or similar officer of the appellant by hand; or
  - (ii) by leaving it at or by sending it through registered post to, its address for service of documents stated in the notice of appeal served or the last known address of the appellant;
- (e) in the case of an appellant which is not a body corporate –
- (i) by delivery to him by hand; or
  - (ii) by leaving it at or by sending it through registered post to, his address for service of documents stated in the notice of appeal served or his last known address;
- (f) in the case of any other person which is a body corporate –
- (i) by delivery to the chairman, president, clerk, secretary, treasurer or similar officer of the person by hand; or
  - (ii) by leaving it at or by sending it through registered post to, its registered office in Hong Kong or any place in Hong Kong at which the body carries on business or the last known address of the body corporate; and
- (g) in the case of any other person who is not a body corporate –
- (i) by delivery to him by hand; or
  - (ii) by leaving it at or by sending it through registered post to, the last known address of the person.

**15. Discretionary powers in the conduct of the appeal**

(1) The Chairman may, on such terms as he thinks fit, after the commencement of an appeal under section 3 –

- (a) extend or abridge the period within which either party to the appeal is required or authorized by these Rules to do any act in any proceedings;
- (b) dispense with the requirement of service by either party to the appeal of any document, notice, order, material or thing under these Rules;
- (c) change the date, time and place fixed for hearing of an appeal under section 7 in consultation with the person who is to preside at the hearing of the appeal.

(2) The person who is to preside at the hearing of an appeal may exercise the powers conferred on the Chairman under subsection (1).

(3) Where the date, time and place fixed for hearing of an appeal is changed under subsection (1)(c), the secretary shall, within one clear working day after the change, serve on the appellant and the Authority a notice of the date, time and place for hearing in Form 3 in the Schedule.

**SCHEDULE**

[ss. 3, 7, 12 & 15]

**FORMS**

**FORM 1**

**PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE**

(Chapter 132)

(section 3 of the Appeal Board on Closure Orders (Immediate Health Hazard) Rules (L.N. of 2002))

NOTICE OF APPEAL

To: The Secretary, Appeal Board on Closure Orders (Immediate Health Hazard)

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. Address of premises affected by the Authority's closure order or the Authority's refusal to issue a notice to rescind the closure order: (A copy of the closure order or the notice issued by the Authority declaring his refusal to rescind the closure order must be attached to this form.)

5. Details of the Authority's decision or order and grounds for this appeal are: (Please set them out in full and attach additional sheets, if necessary.)

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6. Other persons who are affected by Authority's decision or order: (Please list out their names (English and Chinese), addresses and contact telephone numbers.)

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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 Appeal Board on Closure Orders (Immediate Health Hazard) Rules (L.N. of 2002))

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 a closure order made under section 128C(1)/notice of refusal to issue a notice to rescind a closure order served under section 128C(7)\* of the Public Health and Municipal Services Ordinance (Cap. 132) on the ..... day of ..... 20.....

To: ..... (Appellant)

And to: .....(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 date and time mentioned, either in person or by a person duly authorized to appear on your behalf, the appeal may be adjourned or be heard in your absence.

Dated this ..... day of ..... 20.....



.....  
Secretary, Appeal Board on Closure Orders  
(Immediate Health Hazard)

\*Delete as appropriate.

FORM 3

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE  
(Chapter 132)

(section 15 of the Appeal Board on Closure Orders (Immediate  
Health Hazard) Rules (L.N. of 2002))

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

Appeal No. .... of 20.....

In the matter of the appeal lodged by ..... (Appellant)  
against a closure order made under section 128C(1)/notice of refusal to issue a  
notice to rescind a closure order served under section 128C(7)\* of the Public  
Health and Municipal Services Ordinance (Cap. 132) on  
the ..... day of ..... 20.....

To: ..... (Appellant)

And to: ..... (Authority)

**TAKE NOTICE** that the above appeal will be heard

at ..... on the .....day  
of ..... 20..... at .....a.m. / p.m.

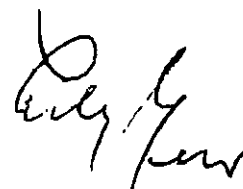
This notice supersedes the notice of date, time and place fixed for hearing of an appeal sent to you previously.

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

Dated this ..... day of ..... 20.....

.....  
**Secretary, Appeal Board on Closure Orders  
(Immediate Health Hazard)**

\*Delete as appropriate.



**Chairman,  
Appeal Board on Closure Orders  
(Immediate Health Hazard)**




29 November 2002

**Explanatory Note**

These Rules –

- (a) regulate the making of appeals to the Appeal Board on Closure Orders (Immediate Health Hazard);
- (b) specify the documents to be served in relation to an appeal;  
and
- (c) provide for the hearing and determination of those appeals.

**Time Schedule of Steps Leading to a Hearing of Appeal under the  
Appeal Board on Closure Orders (Immediate Health Hazard)**

Day/ Action	0	1	2	3	4	5	6	7	8	9	10
Secretariat	(i) Receive the Notice of Appeal (s.3)										
	(ii) Serve the Notice of Appeal on Authority (s. 4)  <b>1 day</b>										
	(iii) Fix date, time and place of hearing (s. 7(1)(a))  (iv) Serve notice of date, time and place of hearing on the Appellant and Respondent (s. 7(1)(b))   <b>3 days</b>						(v) Serve the Notice of Appeal from Appellant and the statement from Authority on Board Members	(vi) Invite relevant person(s) to make representation at the hearing  (vii) Serve supplementary documents, representations or material lodged under s.6(1) on the Authority and other relevant persons			(viii) Attend the hearing (s. 7(2))
Authority			(i) Lodge statement with secretary and serve it on Appellant (s. 5)   <b>3 days</b>			(ii) Lodge written request to invite relevant person(s) to make representation at the hearing (s. 8(a)) <b>3 days</b>					(iii) Attend the hearing (s. 7(2))
Appellant	(i) Lodge the Notice of Appeal (s. 3)					(ii) Lodge further documents, representations or material (s. 6(1))  (iii) Lodge written request to invite relevant person(s) to make representation at the hearing (s. 8(a)) <b>3 days</b>					(iv) Attend the hearing (s. 7(2))

**APPEAL BOARD ON CLOSURE ORDERS  
(IMMEDIATE HEALTH HAZARD)**

**NOTICE OF APPEAL**

To: Secretary, Appeal Board on Closure Orders  
(Immediate Health Hazard)

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. Address of premises affected by the Authority's closure order or the Authority's refusal to issue a notice to rescind the closure order:

(A copy of the closure order or the notice issued by the Authority declaring his refusal to rescind the closure order must be attached to this form.)

.....

.....

5. Details of the Authority's decision or order and grounds for this appeal are: (Please set them out in full and attach additional sheets, if necessary.)

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6. Other persons who are affected by Authority's decision or order:  
(Please list out their names (English and Chinese), addresses and contact telephone numbers.)

.....  
.....  
.....  
.....  
.....

Dated this ..... day of ..... 20.....

.....  
(Signature of Appellant)

- Note :
- (1) 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.
  - (2) The completed form should be delivered by hand to the Secretary, Appeal Board on Closure orders (Immediate Health Hazard) at Room 1013, 10/F Citibank Tower, 3 Garden Road, Central, Hong Kong
  - (3) For enquiries, please contact the Appeal Board Secretariat at 2136 3331 or by fax at 2136 3282.