

**Information Note to Subcommittee on Building (Planning) (Amendment)
Regulation 2008
on Changes to Food Business Licensing Procedure arising from
Recommendations of the Team Clean's Report
with regard to Unauthorized Building Works**

Background

Following the discussion on raised platforms in existing restaurants at the Subcommittee's meeting on 10 June 2008, the Administration was requested, inter alia, to provide background and recommendations of Team Clean's Report on Measures to Improve Environmental Hygiene in respect of unauthorized building works (UBWs) in food premises, the approving criteria for food business licences prior to the introduction of the new licensing procedures and changes to food business licensing procedures in the light of the recommendations of Team Clean.

2. This paper provides information on the recommendations of Team Clean's Report and on changes to food business licensing procedures arising from the recommendation of Team Clean with regard to UBWs with particular reference to raised platforms in existing restaurants from the perspective of the Buildings Department (BD).

The Team Clean Initiative

3. To resolve the problem of UBWs in food premises, the Team Clean's Report proposes the Food and Environmental Hygiene Department (FEHD) to refuse to issue a licence to any applicant if it comes to FEHD's knowledge that there are UBWs attached to or extending from the premises under applications. For applications for provisional licence, certification from an authorized person that the premises in question are free of UBWs would be required. For existing licensed food premises with UBWs, the transfer of licence will not be allowed unless the UBWs are removed. These measures aim to prevent problems at source and to reduce the size of the problem over time by natural attrition.

4. With effect from 18 April 2006, FEHD requires the submission of a certificate certifying the premises under application are free of UBWs for

restaurant licence. BD in the implementation of the new system has provided guidance notes on the certification and conducts audit-checking of the certificates submitted by authorized persons.

Provisions of the Buildings Ordinance

5. As far as building works are concerned, under section 14(1) of the Buildings Ordinance (BO), building works, unless exempted, shall not be carried out without prior approval from the Building Authority (BA).

6. By virtue of section 41(3) of the BO, building works not involving the structure of any building may be carried out in any building without approval from the BA but the building works must not be carried out in contravention of the regulations under the BO.

7. Raised platforms which construction does not involve the structure of any building may fall within the provision of section 41(3) of the BO and do not require approval from the BA under the BO. Such platforms would not be classified as UBWs if they do not contravene the regulations under the BO in force at the time of construction of the platform.

8. For platforms which construction involves the structure of the parent building and without prior approval of the BA or for platforms which construction does not involve the structure of the parent building but resulting in contravention of the regulations under the BO such as the non-provision of access ramp for persons with a disability required under regulation 72 of the Building (Planning) Regulations in force at the time of construction of the platforms, they are building works carried out in contravention of the provisions of the BO and are UBWs under the BO. The BA may require removal or rectification of such UBWs under section 24 of the BO.

The role of BD in Licence Applications

9. The role of the BD is stated in A Guide to Application for Restaurant Licences (the Guide) issued by FEHD.

10. For applications on restaurant licence submitted to FEHD, these applications will be referred to BD for comments in regard to the suitability of the premises in the following areas:

- a) Structural safety;
- b) Fire resisting construction;
- c) Means of escape; and
- d) Unauthorized building works affecting public safety.

11. It is stated in the Guide that nothing contained therein shall be taken as in any way derogating from the powers of the Director of Buildings under the BO. The Guide draws the applicant's attention to the Disability Discrimination Ordinance in regard to the provision of access and facilities for persons with a disability. The Guide also states that unauthorized removal or alteration of existing approved access and facilities for persons with a disability may be subject to enforcement action under the BO.

12. Before the implementation of the Team Clean initiative on 18 April 2006, BD would not raise adverse comment on restaurant licence applications because of the non-provision of access ramp to raised platform as such non-provision did not fall within the scope stated in paragraph 10 above.

13. As raised platforms within the licenced premises not provided with access ramp required by the regulations under the BO in force at the time of construction of the platforms are UBWs, removal of such platforms is required under the new licensing system upon the implementation of the Team Clean initiative. For raised platforms constructed before the introduction of legislative requirement for access ramp and which do not contravene any provision of the BO (including its subsidiary legislation) in force at the time of construction, they are not UBWs and need not be removed under the new restaurant licensing system.

Buildings Department
11 June 2008