

Passed the Legislative Council of Hong Kong, this 21st day of December, 1955.

R. W. PRIMROSE,
Deputy Clerk of Councils.

(Secretariat 12/3231/53)

BUILDINGS ORDINANCE, 1955.

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HONG KONG

No. 68 OF 1955.

This Ordinance has not been repealed but see now authentic reprint made under the provisions of section 29 of the Buildings (Amendment) Ordinance, 1959. (No. 44 of 1959) published in the Special Supplement of the *Gazette* on 8th January, 1960. The reprint will be bound at the end of the 1960 Annual Volume of Ordinances.

A. G. GRANT

Governor.

22nd December, 1955.

An Ordinance to amend and consolidate the law relating to the construction of buildings.

[1st June, 1956.]

G.N. 44/56

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

1. (1) This Ordinance may be cited as the Buildings Ordinance, 1955, and shall come into operation on a day to be appointed by the Governor by proclamation in the *Gazette*.

Short title and commencement. *In operation on 1.6.56 by Proc. No. 1 of 1956.*

(2) (a) This Ordinance shall apply to the island of Hong Kong, Aplichau, Kowloon and New Kowloon.

Interpretation.

G.N. 44/56

(b) The Governor in Council may by order apply the same to the New Territories (not including New Kowloon) or any part thereof at such time and subject to such modifications and exemptions as he may from time to time deem fit.

2. (1) In this Ordinance, save where the context otherwise requires—

“authorized architect” means any person whose name is for the time being on the register of authorized architects maintained under section 3;

“building” includes the whole, or any part, of any domestic or public building, arch, bridge, chimney, cookhouse, cowshed, dock, factory, garage, hangar, hoarding, latrine, lift, matshed, office, out-house, pier, shelter, shop, stable, stairs,

wall, warehouse, wharf, or workshop and such other structures as the Building Authority may by notice in the *Gazette* declare to be a building;

“Building Authority” means the Director of Public Works;

“building owner” means a person desiring to build a new building or to alter an existing building and shall include the agent and authorized architect of a building owner;

“building works” includes any kind of building construction, site formation, repairs, demolition, alteration, addition and every kind of building operation, and includes drainage works;

“dangerous building” means any building in such a condition as to cause risk of injury either to the occupiers or users of such building or to the occupiers or users of any neighbouring building or to the general public;

“new building” means any building hereafter erected and also any existing building of which not less than one half measured by volume is rebuilt or which is altered to such an extent as to necessitate the reconstruction of not less than one half of the superficial area of the main walls;

“occupier” means in the case of domestic buildings a person resident therein and in the case of other buildings means a person carrying on an occupation full-time in such building;

“owner” includes any person holding premises direct from the Crown whether under lease, licence or otherwise, any mortgagee in possession and any person receiving the rent of any premises, solely or with another, on his own behalf or that of any person, or who would receive the same if such premises were let to a tenant, and where such owner as above defined cannot be found or ascertained or is absent from the Colony or is under disability, the agent of such owner;

“registered contractor” means any person whose name is for the time being on the register of registered building contractors maintained under section 6;

“regulations” mean rules and regulations made under this Ordinance;

"street" includes the whole or any part of any square, court or alley, highway, lane, road, road-bridge, footpath, or passage whether a thoroughfare or not.

(2) The duties imposed on and the powers granted to the Building Authority under this Ordinance may be carried out and exercised by any officer of the Public Works Department authorized by the Director of Public Works either generally or particularly and subject to his instructions.

PART I.

Authorized Architects and Registered Contractors.

3. (1) The Building Authority shall keep a register (hereinafter referred to as the architects' register) of all persons who are qualified to perform the duties of an authorized architect in accordance with the provisions of this Ordinance, and shall publish a list of such persons annually in the *Gazette*. Register of authorized architects.

(2) Every applicant for inclusion in the architects' register shall submit his application in the prescribed form to the Building Authority. Form 1.

(3) The Building Authority may appoint a Committee, not exceeding nine in number, to be known as the Authorized Architects Consulting Committee, to assist him in his consideration of such applications.

(4) No person shall be included in the architects' register unless he has the qualifications prescribed by regulations:

Provided that any person who is at the date of the coming into operation of this Ordinance registered as an authorized architect under the provisions of the Buildings Ordinance shall be deemed to be registered as if he had duly applied for and obtained registration under this section. (Cap. 123).

(5) In respect of every application for inclusion in the architects' register, the Building Authority shall within three months—

- (a) upon payment by the applicant of the prescribed fee publish in the *Gazette* and enter in the architects' register the name of the applicant; or

- (b) inform the applicant that his application is deferred for a period not exceeding six months; or
- (c) refuse the application.

(6) Any person, whose application for registration is refused, may appeal to the disciplinary board established by regulations against such refusal.

Appoint-
ment and
duties of
authorized
architects.

4. (1) Except where exempted by the Building Authority every building owner shall appoint an authorized architect in respect of all building works undertaken.

(2) If an authorized architect so appointed become unwilling or unable to act, the building owner shall, save where exempted by the Building Authority, appoint another authorized architect in his stead.

(3) The authorized architect appointed by the building owner shall—

- (a) supervise the execution of the building works in the manner provided by regulations,
- (b) notify the Building Authority of any contravention of the regulations that would result from the carrying out of the work shown in a plan approved by the Building Authority,
- (c) deliver to the Building Authority a certificate of completion in accordance with the provisions of the regulations, and
- (d) comply generally with the provisions of this Ordinance.

Censure
and
removal
from
register of
authorized
architects.

5. (1) If an authorized architect be convicted by any court in the Colony of such an offence or appear to the Building Authority to be guilty of such negligence or misconduct as in his opinion—

- (a) renders the architect unfit to be on the architects' register; or
- (b) makes the architect's continued inclusion in the architects' register prejudicial to the due administration of this Ordinance; or

(c) renders the architect deserving of censure, the Building Authority may bring such offence, negligence or misconduct to the notice of the disciplinary board established by regulations (hereinafter referred to as "the Board").

(2) After due inquiry the Board may direct—

(a) that the name of the architect be struck off the architects' register permanently or for such period as it may direct; or

(b) that the architect be censured; and in either case

(c) that its findings and directions be published in the *Gazette*.

(3) For the purpose of conducting an inquiry the Board shall have all such powers as are vested in the Supreme Court in respect of the following matters—

(a) enforcing the attendance of witnesses and examining them upon oath or otherwise;

(b) compelling the production of documents;

(c) ordering an inspection of premises; and

(d) entering upon and viewing premises.

(4) (a) An appeal shall lie from any decision of the Board that the name of an architect be struck off the architects' register, and such appeal shall be to a judge of the Supreme Court in manner provided by the Rules of the Supreme Court.

(b) On appeal the judge may confirm, vary or reverse the decision of the Board and may exercise any power which the Board might have exercised:

Provided that the judge may, notwithstanding that he is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if he considers that no substantial miscarriage of justice has actually occurred.

(c) The decision of the judge shall be final.

6. (1) The Building Authority shall keep a register (hereinafter referred to as the contractors' register) of all persons who are qualified to perform the duties of a registered contractor in accordance with the provisions of this Ordinance, and shall publish a list of such persons annually in the *Gazette*.

Register of
registered
contractors.

Form 2.

(2) Every applicant for inclusion in the contractors' register shall submit his application in the prescribed form to the Building Authority.

(3) In respect of every application for inclusion in the contractors' register, the Building Authority shall within three months—

- (a) upon payment by the applicant of the prescribed fee publish in the *Gazette* and enter in the contractors' register the name of the applicant, and issue to him a certificate of registration in the prescribed form; or
- (b) inform the applicant that his application has been deferred for a period not exceeding six months; or
- (c) refuse the application.

(4) Any person whose application for registration is refused may appeal to the disciplinary board established by regulations.

Appoint-
ment and
duties of
registered
contractors.

7. (1) Except where exempted by the Building Authority every building owner shall appoint a registered contractor in respect of all building works undertaken.

(2) If a registered contractor so appointed become unwilling or unable to act, the building owner shall, save where exempted by the Building Authority, appoint another registered contractor in his stead.

(3) The registered contractor appointed by the building owner shall—

- (a) give continuous supervision to the carrying out of building works;
- (b) notify the Building Authority of any contravention of the regulations that would result from the carrying out of the work shown in a plan approved by the Building Authority, and
- (c) comply generally with the provisions of this Ordinance.

Censure
and
removal
from
register of
registered
contractors.

8. (1) If a registered contractor be convicted by any court in the Colony of such an offence or appear to the Building Authority to be guilty of such negligence or misconduct in the execution of any building works as in his opinion—

- (a) renders the contractor unfit to be on the contractors' register; or

- (b) makes the contractor's continued inclusion in the contractors' register prejudicial to the due administration of this Ordinance; or
- (c) renders the contractor deserving of a fine or of censure, the Building Authority may bring such offence, negligence or misconduct to the notice of the disciplinary board established by regulations (hereinafter referred to as "the Contractors' Board").
- (2) After due inquiry the Contractors' Board may direct—
- (a) that the name of the contractor be struck off the contractors' register permanently or for such period as it may specify; or
- (b) that the contractor be fined a sum not exceeding two thousand dollars, which sum shall be recoverable under section 23 as though it were costs incurred by the Building Authority; or
- (c) that the contractor be censured, and in each case
- (d) that its findings and directions be published in the *Gazette* :

Provided that the powers conferred by paragraphs (b), (c) and (d) of this subsection may be exercised by such quorum of the Contractors' Board as the regulations may prescribe.

(3) For the purpose of conducting an inquiry the Contractors' Board shall have all such powers as are vested in the Supreme Court in respect of the following matters—

- (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
- (b) compelling the production of documents;
- (c) ordering an inspection of premises; and
- (d) entering upon and viewing premises.
- (4) (a) An appeal shall lie from any decision of a quorum of the Contractors' Board to the full body.
- (b) An appeal shall lie from any decision of the Contractors' Board that the name of a registered contractor be struck off the contractors' register, and such appeal shall be to a judge of the Supreme Court in manner provided by the Rules of the Supreme Court.

- (c) On appeal the judge may confirm, vary or reverse the decision of the Contractors' Board and may exercise any power which the Contractors' Board might have exercised :

Provided that the judge may, notwithstanding that he is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if he considers that no substantial miscarriage of justice has actually occurred.

- (d) The decision of the judge shall be final.

PART II.

Control of Building.

Necessity
for consent
to
commence
building
works and
require-
ments for
such
consent.
Form 3.

9. (1) Except as otherwise provided by this Ordinance, no person shall commence or carry out building works without the consent of the Building Authority in the prescribed form. Such consent shall not be deemed—

- (a) to confer any title to land; nor
- (b) to act as a waiver of any term in any lease or licence; nor
- (c) to grant any exemption from the provisions of this Ordinance; nor
- (d) to permit any contravention of the Landlord and Tenant Ordinance.

(Cap. 255;
1953
Reprint).

(2) The Building Authority may refuse his consent to the carrying out of any building works where—

- (a) he has not received—
 - (i) notice in writing in the prescribed form;
 - (ii) such plans as may be prescribed by regulations; and
 - (iii) such other documents and information as may be so prescribed; or
- (b) the prescribed fees in respect of such plans have not been paid :

Form 4.

Provided that where plans are received within twelve months of the coming into operation of this Ordinance the Building Authority may give his consent to the carrying out of building works which conform with the provisions of the Buildings Ordinance.

(Cap. 123).

(3) In giving his consent to the carrying out of any building works involving the structural use of steel, concrete or timber the Building Authority may, notwithstanding the provisions of any regulations, by order in writing require the building owner, authorized architect and registered contractor to comply with such conditions as he may prescribe concerning—

- (a) maximum loads and stresses;
- (b) tests of materials;
- (c) the use of materials;
- (d) standards of workmanship; and
- (e) qualified supervision.

(4) The Building Authority may refuse his consent to the carrying out of any building works which would result in a new building until he has received plans in respect of the whole building for such building works as in his opinion are necessary to make such building comply with the standard of structural stability and public health established from time to time by regulations.

(5) The Building Authority shall refuse his consent to the carrying out of any building works which contravene an approved plan prepared under the Town Planning Ordinance.

(Cap. 131).

(6) The Building Authority may refuse his consent to the carrying out of any building works which—

- (a) do not conform with draft plans prepared under the Town Planning Ordinance;
- (b) contravene the provisions of any other enactment; or
- (c) would result in a building differing in height, design, type or intended use from buildings in the immediate neighbourhood or previously existing on the same site.

(Cap. 131).

(7) Upon the expiration of such time as may be prescribed by regulations from the date of receipt by the Building Authority of all the particulars referred to in subsection (2), his consent to the building works referred to in such particulars shall be deemed to have been given unless by registered post or in other sufficient manner he has notified the authorized architect—

- (a) that such particulars are not such as are prescribed by regulations; or

- (b) that the carrying out of such building works would contravene the provisions of this Ordinance :

Provided that, where under regulations the Building Authority calls for further particulars, he shall do so within twenty-one days of the original submission of all the particulars referred to in subsection (2), and the said consent shall, failing such notification, likewise be deemed to have been given upon the expiration of—

- (i) the same period, or
 (ii) fourteen days from the receipt by him of such further particulars, whichever is the later.

Provision
for urgent
work.

10. (1) Where—

- (a) any accident or emergency renders it necessary to shore up, underpin, demolish or otherwise make safe any existing building immediately; and

Form 5.

- (b) notice in writing in the prescribed form of such work and of the accident or emergency which necessitated the same is given to the Building Authority by the building owner either before such work is authorized by him or within forty-eight hours after it has been commenced whichever is the earlier,

the building owner may commence such work without obtaining the Building Authority's consent under section 9.

(2) If the Building Authority consider that the emergency no longer exists he may by order in writing served on the building owner require that building works cease until consent under section 9 is obtained.

Resump-
tion of
suspended
work, etc.

11. Where building works in respect of which the consent of the Building Authority has been obtained are not commenced within three months thereof, or if commenced are suspended for such a period, such consent shall be deemed to be revoked :

Provided that the Building Authority may in writing renew such consent upon such conditions as in his opinion are made necessary by reason of such delay in commencement or such suspension.

Occupation
of new
building.
Form 6.

12. (1) No new building shall be occupied in any way, except by not more than two caretakers, until the Building Authority issues a permit in the prescribed form.

(2) Upon the expiration of fourteen days from the date of the receipt by the Building Authority of the certificate of completion given by an authorized architect under subsection (3) of section 4, such permit shall be deemed to have been granted, unless by registered post or in other sufficient manner the Building Authority has notified the building owner that the building works have not been carried out in accordance with the provisions of this Ordinance.

13. (1) The Building Authority or any public officer authorized in writing by him in that behalf may at any time enter and where necessary, in the presence of a police officer, break into any premises—

Powers of
Building
Authority.

- (a) to ascertain whether any building or structure is dangerous or liable to become dangerous;
- (b) to inspect or test any drainage system;
- (c) to ascertain whether the provisions of this Ordinance or of any notice order or regulation hereunder are being complied with;
- (d) to carry out or cause to be carried out any work which he is authorized to carry out under this Ordinance.

(2) For the purposes of subsection (1)—

- (a) a building owner shall provide or cause to be provided reasonable means of access to every part of any building works carried out by him; and
- (b) the Building Authority or a public officer authorized under this section may take such steps in respect of the building works as he may deem necessary, including the making of openings and the taking of reasonable samples.

(3) The Building Authority may by order in writing require an authorized architect to carry out such tests as may be specified in the order.

14. Where in the opinion of the Building Authority the provisions of this Ordinance are not being complied with in connexion with any building works he may by order in writing served on the building owner require that the building works cease until such order is withdrawn.

Building
works to
cease on
order of
Building
Authority.

Order for
demolition
or altera-
tion of
building.

15. (1) Where any building is erected otherwise than in accordance with the provisions of this Ordinance the Building Authority may by order in writing served on the owner of such building require—

- (a) the demolition of the building; or
- (b) such alteration of the building as may be necessary to comply with the provisions of this Ordinance, and
- (c) in either case specify the time within which such requirements are to be complied with.

(2) If such order be not complied with, the Building Authority may demolish or alter or cause to be demolished or altered such building, and the cost thereof shall be recoverable from the owner.

(3) The Building Authority may sell or otherwise dispose of any materials resulting from such demolition or alteration carried out by him, but shall account to the owner for such sum as seems proper in the opinion of the Building Authority.

Change
in use of
buildings.
Form 7.

16. (1) One month's notice in writing in the prescribed form shall be given to the Building Authority of any intended material change in the use of a building by the person intending to carry out or authorizing the carrying out of such change.

(2) Where in the opinion of the Building Authority any building is not suitable by reason of its construction for its present or intended use, he may by order in writing served on the owner or occupier—

- (a) within one month of the receipt of a notice under subsection (1) prohibit such intended use; or
- (b) require the owner or occupier to discontinue such present use of the building within one month from the service of the order:

Provided that the Building Authority may permit by notice in writing such building works as he deems necessary for the purpose of rendering the building suitable for its present or intended use.

(3) The use of a building shall be deemed to be materially changed—

- (a) where the carrying out of building works for the erection of a building intended for such use would have contravened the provisions of this Ordinance; or
- (b) where the Building Authority could have refused his consent to the carrying out of such works under paragraph (c) of subsection (6) of section 9.

17. (1) Where in the opinion of the Building Authority any building has been rendered dangerous or liable to become dangerous by fire, wind, rain, dilapidation, use, lack of fire escapes or any other cause, the Building Authority may by order in writing in the prescribed form served on the owner declare such building to be dangerous or liable to become dangerous. Dangerous buildings.
Form 8.

(2) Such order may—

- (a) require the demolition of the whole or part of such building;
- (b) require that the building be made safe generally;
- (c) specify work that must be done to make such building safe;
- (d) require that shoring shall be erected and may specify the manner and location thereof;
- (e) require a fence or hoarding for the protection of the public;
- (f) require the closure of such building; and
- (g) specify the time within which such requirements are to be complied with.

(3) Where the owner of a dangerous building cannot be found or fails to comply with the requirements of an order served under this section, the Building Authority may carry out or cause to be carried out the work specified in such order or such other work as he considers to be necessary and the cost thereof shall be recoverable from the owner.

(4) In cases of emergency the Building Authority may carry out or cause to be carried out such work as may appear to him to be necessary either without notice to the owner, or before or

after such notice, and so far as it is in the opinion of the Building Authority attributable to such emergency the cost thereof shall be recoverable from the owner. The decision of the Building Authority that the particular case is one of emergency shall be final and binding on all persons.

Closure
Order.

18. (1) Upon the application of—

(a) the Building Authority where in his opinion any building is dangerous or liable to become dangerous; or

(b) the owner—

(i) where a notice has been served upon him by the Building Authority requiring closure of a building under section 17; or

(ii) where the Building Authority has supplied a certificate to him showing that a building should be closed in order to enable building works to be carried out without danger to the occupiers or to the public,

a magistrate shall on being satisfied that notice has been given in accordance with the provisions of subsection (2) make a Closure Order :

Provided that nothing in sub-paragraph (ii) of paragraph (b) of this subsection shall entitle an owner to carry out any building works which would result in a contravention of the Landlord and Tenant Ordinance.

(Cap. 255,
1953
Reprint).

(2) (a) Seven days notice of intention to apply for a Closure Order shall be given by the person making such application by posting a copy of such notice upon a conspicuous part of the building to be affected, and upon being so posted such notice shall be deemed to be notice to all persons of such intention :

Provided that in the case of an emergency such notice shall be given as is practicable.

(b) The notice shall reproduce in clear and legible form subsections (3) and (7) of this section in both the English and Chinese languages.

(3) (a) Within fourteen days of the posting of the notice under subsection (2) any occupier of the building may serve on the owner notice of his intention to re-occupy the building on the expiry of the Closure Order.

(b) Such notice of intention to re-occupy may be revoked in like manner by the occupier during the continuance in force of the Closure Order.

(4) A Closure Order made under this section shall—

(a) specify the building to be closed; and

(b) order the closure thereof under the direction of a police officer; and

(c) order that such building remain closed until the Building Authority shall have certified in writing that the order is no longer required.

(5) No person shall occupy any building during the continuance in force of a Closure Order made in respect thereof.

(6) Notice of the expiry of a Closure Order shall be given by the owner in like manner and for a like period as a notice of intention to apply for such order. Notwithstanding the giving by the Building Authority of a certificate under paragraph (c) of subsection (4), the Closure Order shall be deemed to continue in force until the giving of a notice under this subsection.

(7) Any occupier who has given notice under subsection (3) may, during the continuance in force of the notice of expiry of the Closure Order, re-enter and occupy the building upon the terms and conditions relating to such occupation at the date of the making of the Closure Order :

Provided that nothing in this subsection shall preserve or revive any rights necessarily extinguished or curtailed by the carrying out of any building works in compliance with an order of the Building Authority made under subsection (2) of section 17.

(8) Where an occupier who has given notice under subsection (3) and has not revoked the same fails to exercise his right to re-enter, the person who would have been entitled to receive the rent from such occupier shall be entitled to recover from him a sum equal to one month's rent by action commenced in the District Court.

19. (1) All drainage works for any building shall be carried out by the owner of such building to the satisfaction of the Building Authority and in compliance with regulations. Drainage.

(2) Where in the opinion of the Building Authority any group of buildings may be drained more advantageously in combination than separately he may—

(a) by an order in writing served on the owners of such buildings require to be carried out the necessary drainage works under a combined plan approved by him; or

(b) carry out or cause to be carried out such works and recover the cost thereof from such owners.

(3) Where in the opinion of the Building Authority the drains of any building are inadequate or in a defective or insanitary condition he may—

(a) by an order in writing served on the owner of such building require him to carry out such drainage works as the Building Authority may deem necessary within such reasonable time as may be specified in the order; or

(b) carry out or cause to be carried out such works, and recover the cost thereof from the owner.

(4) For the purposes of this section drainage works mean all works connected with the construction, repair, alteration, disconnection, trapping and ventilation of the drains on the land held under lease, licence or otherwise from the Crown by the owner of the building, and the connexion of such drains to the public drainage system in the manner prescribed by regulations.

Construction and maintenance of streets, etc.

20. (1) Every street on land held under lease, licence or otherwise from the Crown shall be surfaced, channelled, sewered, provided with lighting apparatus and drained by the owner of the land to the satisfaction of the Building Authority and with such apparatus shall be maintained in good order to his satisfaction, the cost of the illumination alone being borne by Government.

(2) Where the owner of any land fails to surface, channel, sewer, light, drain or maintain such street to the satisfaction of the Building Authority, the Building Authority may—

(a) by order in writing served on the owners of the land require them to carry out such work within such reasonable time as may be specified in the order; or

(b) carry out or cause to be carried out such work and recover the cost thereof from the owners.

(3) Where any street is owned by more than one person the Building Authority may, if he consider the public interest better served by such work being carried out by or under his direction, carry out or cause to be carried out such work and recover the cost as aforesaid from such owners notwithstanding the willingness of one or more of such owners to carry out such work without his intervention.

(4) The Building Authority shall give one month's notice of his intention to carry out works under subsection (2) or (3) to all persons who appear to him to be concerned and shall consider and make reply to all representations made to him within fourteen days of such notice by such persons before commencing or authorizing such works.

(5) (a) The owner or owners of any street may serve notice in writing in the prescribed form on the Building Authority signifying their desire to surrender the said street to the Crown free of their interests of whatsoever nature, and requiring Government to undertake the further maintenance and repair of such street. Form 9.

(b) Within three months of the receipt of such notice the Building Authority shall either—

(i) give notice to the owners of the Crown's intention of accepting the surrender of the street, and, where he considers it necessary, of his intention to exercise his powers under subsection (2) or (3); or

(ii) give notice to the owners of the Crown's intention not to accept the surrender on the grounds that the use of the street by the public does not justify its maintenance and repair at the cost of the Government.

(6) The Building Authority may exempt wholly or partly from the application of this section any street on which no buildings front or abut.

PART III.

Miscellaneous and General.

21. (1) Save where exempted by the Building Authority no building or other structure shall be erected in, over or upon any portion of any street whether or not on land held under lease from the Crown. Projections on or over streets.

(2) Where in the opinion of the Building Authority the public interest so requires he may—

(a) by order in writing served on the owner of the building any part of which projects, or attached to which is any projection, over any street or unleased Crown land require the alteration or removal of such projection within three months from the service of the order or within such lesser period as the Building Authority may deem necessary in the circumstances; or

(b) carry out or cause to be carried out such alteration or removal and, except in the case of a projection over a street held on lease from the Crown, recover the cost thereof from such owner.

(3) Where—

(a) no exemption is granted by the Building Authority under section 29 for the re-erection over or upon any portion of a street held on lease from the Crown of a building which had been so built under the provisions of this or any earlier enactment; or

(b) the Building Authority exercises his power under subsection (2) to require the alteration or removal of, or alters or removes any projection built under the provisions of this or any earlier enactment over such a street,

compensation shall be paid by the Government to the owner of such building.

(4) Any dispute as to whether any compensation is payable or as to the amount of such compensation shall, in default of agreement, be determined by arbitration in accordance with the provisions of Order XXV of the Code of Civil Procedure.

(Vol. VII,
p. 44).

Naming of
streets and
numbering
of
buildings.

22. (1) The Building Authority may affix to or paint or cause to be affixed to or painted on any building which fronts or abuts on any street the name of such street.

(2) The Building Authority may by an order in writing served on the owner of any building which fronts or abuts on any street require such building to be marked with the number allocated by, and in such manner as may be prescribed by the

competent authority for the purpose of distinguishing such building. For the purposes of this subsection the competent authority shall be—

- (a) in the case of the island of Hong Kong, Aplichau, Kowloon and New Kowloon, the Commissioner of Rating and Valuation;
 - (b) in the case of the New Territories (not including New Kowloon), the District Commissioner, New Territories.
- (3) No person shall obscure or deface any street name or building number.

23. (1) In any case where under this Ordinance the Building Authority is authorized to recover the cost of works carried out by him or caused to be carried out by him, he may certify under his hand the cost due and names of the persons liable therefor, and may by such certificate apportion such cost among such persons.

Recovery
of costs of
works by
Building
Authority.

- (2) Such cost may include—
- (a) the cost of materials supplied by the Building Authority for the purpose of carrying out such works; and
 - (b) supervision charges.
- (3) A copy of the Building Authority's certificate shall be served upon each person affected thereby.
- (4) Interest at the rate of ten per cent per annum from the expiry of one month from the date of such service shall be recoverable as part of such cost.
- (5) The payment of such cost by any person shall be without prejudice to his right to recover the same from any person liable to pay the expenses of the repair of, or of other building works in connexion with, any building.
- (6) Without prejudice to any other remedy of the Building Authority for the recovery of such cost, the Building Authority may recover the same by action in the District Court where the amount claimed does not exceed five thousand dollars, and in the Supreme Court where the amount claimed does exceed this sum, under the provisions of this section.

(7) The writ of summons in connexion with such action shall be taken to have been duly served if it appears, to the satisfaction of the Court, that the writ was left at the defendant's residence or place of business, or in case the same is unknown, that it was left at the buildings in respect of which the claim is made.

(8) A certificate purporting to be under the hand of the Building Authority, made under the provisions of subsection (1), and setting forth that the cost claimed is due or payable to the Building Authority and that the person sued is liable for the payment thereof, and specifying the nature and particulars of the claim shall be *prima facie* evidence of the facts certified therein and of the signature of the Building Authority thereto.

(9) The Building Authority shall sue as Building Authority under this section, but may be represented in Court by any person he may appoint for such purpose.

(10) At any time before such cost has been wholly recovered a memorial of the certificate referred to in subsection (1) may at the discretion of the Building Authority be registered in the Land Office against the title of any property in respect of which such cost arose and in such event such cost shall be a charge upon the land recoverable in accordance with subsection (6) from any person who from such Land Office registers then or thereafter appears to be the owner thereof :

Provided that a charge shall not be deemed to arise solely by virtue of this subsection in respect of any person whose interest was registered before the registration of the memorial of such certificate by the Building Authority.

(11) Upon the recovery of any sum under this section the Building Authority shall lodge in the Land Office an appropriate memorial of satisfaction against any memorial lodged there by him under subsection (10).

Service of
notices and
orders.

24. Any notice, order or certificate required to be served under this Ordinance may be served by serving a copy—

(a) personally ; or

(b) by registered post addressed to the last known place of business or residence of the person to be served ; or

- (c) by leaving the same with an adult occupier of the premises to which the notice or order relates or by posting the same upon a conspicuous part of such premises :

Provided that in addition to or in substitution for any such method of service the publication in the *Gazette* of any such notice or order together with the available particulars of the person to whom it is addressed shall be deemed to be good service.

25. (1) No liability shall rest upon Government or upon any public officer by reason of the fact that any building works are carried out in accordance with the provisions of this Ordinance or that such building works or the plans thereof or materials therefor are subject to inspection or approval by a public officer, nor shall anything in this Ordinance make it obligatory for the Building Authority to inspect any building, building works or materials or the site of any proposed building to ascertain that the provisions of this Ordinance are complied with or that plans, certificates and notices submitted to him are accurate.

Limitation
of public
liability.

(2) No matter or thing done by the Building Authority or by any public officer acting under his direction shall if it were done *bona fide* for the purpose of executing this Ordinance subject him or such public officer personally to any action, liability, claim or demand whatsoever.

(3) Section 17 of the Law Amendment (Miscellaneous Provisions) Ordinance (which relates to limitation of time and award of costs), shall apply to actions or prosecutions commenced against the Building Authority or any public officer acting under his direction for anything done or intended to be done or omitted to be done under this Ordinance. (Cap. 23).

(4) Nothing in this Ordinance contained shall exempt any person from any proceeding by way of mandamus, injunction, prohibition or other order unless it is expressly so enacted.

26. (1) The Governor in Council may by rules or regulations prescribe or provide for—

Regula-
tions.

- (a) the registration and control of—
- (i) authorized architects;
 - (ii) registered contractors;

- (b) the plans and notices to be delivered to the Building Authority under section 9;
- (c) fees;
- (d) forms;
- (e) planning and design of buildings including—
 - (i) streets;
 - (ii) projections;
 - (iii) heights, volumes and open spaces including scavenging lanes;
 - (iv) lighting and ventilation;
 - (v) sanitation;
 - (vi) staircases and fire-escapes;
 - (vii) domestic buildings;
 - (viii) buildings for special uses including industrial buildings, places of public entertainment and schools;
 - (ix) seawall, breakwater, jetty, mole, quay, wharf and pier;
 - (x) exceptional structures;
 - (xi) timber yards, and hoardings and scaffoldings;
- (f) the construction of buildings including—
 - (i) materials;
 - (ii) loads and stresses;
 - (iii) foundations, floors and sites;
 - (iv) walls and piers;
 - (v) roofs, flues and chimneys;
 - (vi) structural steel work, re-inforced concrete, and timber;
 - (vii) fire-resisting construction;
 - (viii) retaining walls;
 - (ix) plumbing and drainage;
 - (x) wells;
 - (xi) lifts and escalators;
- (g) the granting of permits for and control of buildings required for a limited time or constructed of short lived materials.

(2) Such regulations may provide for the carrying out by the Building Authority of all building works required to be carried out therein, and for the recovery of the costs thereof from the person required to carry out such building works.

(3) (a) Such regulations may provide that where the Building Authority issues permits thereunder he may—

(i) endorse conditions on such permits;

(ii) cancel such permits for breaches thereof; and

(iii) require the permittee to deposit a sum not exceeding five hundred dollars as security for the due compliance with such conditions.

(b) Upon the breach of any such condition, any deposit required by this subsection shall upon application to a magistrate be declared by him to be forfeited to the Crown.

(4) Such regulations may prescribe contraventions thereof which shall constitute offences and may prescribe penalties not exceeding two thousand dollars and six months imprisonment.

(5) Such regulations shall be published once in the *Gazette* at least three weeks before coming into operation:

Provided that where the Governor in Council deems it expedient such publication may be dispensed with.

(6) Such regulations amending or replacing other regulations made hereunder may prescribe the period during which the Building Authority may give approval to plans of building works which conform with the regulations before amendment or replacement.

PART IV.

Offences.

27. (1) Any contravention of the provisions of the sections specified in the table set out in this section, and each of the acts or omissions therein specified shall be an offence. **Offences.**

(2) Any person who commits an offence set out in the following table shall be liable to a fine of two thousand dollars and to imprisonment for six months.

Offence.

- (1) Contravention of—
 - subsection (1) of section 9 — (Necessity for consent to commence building works).
 - subsection (1) of section 12 — (Occupation of new building).
 - subsection (2) of section 13 — (Failure to grant means of access).
 - subsection (5) of section 18 — (Occupation of a building subject to a Closure Order).
 - subsection (1) of section 21 — (Projections).
 - subsection (3) of section 22 — (Obscuring or defacing street names or building numbers).
- (2) Failure to comply with any order of a magistrate or of the Building Authority given under this Ordinance.
- (3) Failure to give any notice required to be given under this Ordinance.
- (4) The contravention of any condition of a permit issued by the Building Authority under section 29 (modifications and exemptions).
- (5) The use by a building owner or an authorized architect or a registered contractor in any building works of any defective materials, workmanship or of any materials contrary to the provisions of this Ordinance.
- (6) Knowingly misrepresenting a material fact in any plan, certificate, form or notice given to the Building Authority under this Ordinance.
- (7) The material divergence or deviation from work shown in any plan approved by the Building Authority under this Ordinance.
- (8) The obstruction of the Building Authority or of any officer authorized by him in the execution of his powers under this Ordinance.
- (9) The failure by an authorized architect or by a registered contractor to notify the Building Authority of the contravention of any regulation that would result from the carrying out of any work shown in a plan approved by the Building Authority:

Provided that in any prosecution for this offence it shall be a defence for the person charged to prove to the satisfaction of the court that he did not know of, nor could reasonably have discovered, such contravention.

(3) Any owner, agent, authorized architect, registered contractor, or any other person directly concerned with the building works, who permits an offence herein specified shall be guilty of such offence and liable to the penalty provided therefor.

(4) Where an offence under this Ordinance has been committed by a body corporate, a partnership or association of persons unincorporated, any person who at the time of the commission of

the offence was a director, manager, partner, secretary or other similar officer thereof, or was purporting to act in any such capacity, shall also be deemed guilty of such offence unless he proves that the offence was committed without his consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

(5) Where anything is required to be done by the owner of a building, and by virtue of section 2 there is more than one owner of such building, it shall be a defence to any charge of failing to do that thing—

- (a) that such thing was done by another owner of the building; or
- (b) that any notice or order in respect of such thing required under this Ordinance to be served on the owner was served on another owner of the building and not on the person charged.

PART V.

Exemptions.

28. (1) The following shall be exempt from the provisions of this Ordinance— Exemptions.

- (a) buildings belonging to the Crown or to the Government;
- (b) buildings upon any land vested in any person on behalf of Her Majesty's naval, military or air force services:

Provided that the provisions of this Ordinance relating to projections over or upon any portion of any street whether or not on land held under lease from the Crown, to hoardings and to scaffoldings shall apply to all buildings.

- (2) (a) Except as otherwise provided under this Ordinance no alterations shall be required to any existing building erected in accordance with the laws of the Colony.
- (b) Building works carried out in accordance with plans approved by the Building Authority before the commencement of this Ordinance, or under the proviso to subsection (2) of section 9, shall be deemed to have been carried out in accordance with the provisions of this Ordinance.

(3) Building works not involving the structure of any building may be carried out in any building without application to or approval from the Building Authority :

Provided that nothing in this subsection shall permit any building works to be carried out in contravention of any regulation.

Building
Authority's
powers of
exemption.
Form 11.

29. (1) Where in the opinion of the Building Authority special circumstances render it desirable he may, on receipt of an application therefor, permit by notice in writing in the prescribed form modifications of the provisions of this Ordinance.

Form 10.

(2) Every application for an exemption under this section, or section 4 (authorized architect to be appointed), or section 7 (registered contractor to be appointed) shall be in the prescribed form, and shall be considered on its own merits by the Building Authority who shall not be required to take account of exemptions granted in the past.

(3) A permit granted under this section may contain such conditions as the Building Authority shall deem necessary.

(4) No such permit shall be granted to the prejudice of the standard of structural stability and public health established from time to time by regulations.

(5) This section shall not apply to—

(a) the necessity for the Building Authority's consent under subsection (1) of section 9; and

(b) the non-approval of plans under subsection (5) of section 9 of building works which do not conform with approved plans made under the Town Planning Ordinance.

(Cap. 131).

(6) The breach of or failure to perform or to consent to any condition attached to a modification or exemption granted under this section shall render such modification or exemption invalid, and thereupon the purported grant of such modification or exemption shall be no defence to any proceedings for non-compliance with the provisions of this Ordinance.

PART VI.

Appeals.

30. (1) The Governor may appoint from time to time an appeal tribunal (hereinafter referred to as the tribunal) for the purpose of determining appeals by persons prejudiced by a decision of the Building Authority in the exercise of his discretion in respect of any act, matter or thing which is by this Ordinance made subject to the exercise of such discretion (hereinafter referred to as an appeal).

Establishment of appeal tribunal.

(2) The tribunal shall consist of not less than three members appointed by the Governor, of whom one shall be nominated by the Building Authority, one shall be a member of the Authorized Architects Consulting Committee and one shall be appointed to represent property owners.

(3) Members of the tribunal shall be remunerated at a rate according to the amount of work, time occupied and magnitude of the interests involved, and such remuneration shall be determined in each case by the Governor :

Provided that nothing in this subsection shall authorize the payment of remuneration to any person employed full time in any office of emolument under the Crown.

31. (1) Every appeal shall be determined by the tribunal by a majority vote in the manner provided in the First Schedule :

Tribunal to hear appeals. First Schedule.

Provided that no appeal shall lie where the same would involve interference with building works already commenced at the time of lodging such appeal.

(2) For the purposes of such determination the tribunal shall have all such powers as are vested in the Supreme Court in respect of—

- (a) enforcing the attendance of witnesses and examining them upon oath or otherwise;
- (b) compelling the production of documents;
- (c) ordering an inspection of premises; and
- (d) entering upon and viewing premises.

32. Where the Building Authority is given notice of appeal in the manner prescribed in the First Schedule he shall not carry out nor permit the carrying out of the decision to which such appeal relates until such appeal has been determined :

Stay of exercise of powers.

Provided that this section shall not apply where after receipt of the notice of appeal the Building Authority by a counter-notice in writing served on the person appealing certifies that an emergency requires the doing of the acts or other things specified in the counter-notice.

Governor
in Council
may review.

33. (1) The determination of the tribunal shall be final and not liable to be set aside for irregularity or error in matter of form, except where the Building Authority certifies in writing that in his opinion such determination involves a matter of Government policy and gives notice to the Colonial Secretary and the parties concerned within fourteen days of such determination.

(2) Where a notice has been received by the Colonial Secretary under subsection (1) the Governor in Council may review the determination to which such notice relates and for that purpose may call for the record of proceedings before the tribunal and for the written representations of such parties as he may require.

(3) Upon the review of such determination the Governor in Council may confirm or set aside the same, and may give such direction to the Building Authority as he may see fit. The decision of the Governor in Council shall be final.

No compensa-
tion to
be awarded.

34. Nothing in this Part shall authorize the award or payment of compensation to any person.

PART VII.

Repeal and Savings.

Repeal of
Cap. 123,
sections
42 and 43
of Cap. 116,
and
Cap. 263.
Savings.
Second
Schedule.

35. (1) The Buildings Ordinance is hereby repealed :

Provided that each of the sections of that Ordinance specified in the first column of the Second Schedule as amended in the manner set out in the second column thereof shall continue in operation until such time as it is replaced by regulations enacted under section 26 or by any other enactment expressed to be in substitution for such section of that Ordinance.

(2) Sections 42 and 43 and subsections (5) and (6) of section 44 of the Rating Ordinance (which deal with numbering of tenements) are hereby repealed.

(3) The Verandahs and Balconies (Inclosure for Office (Cap. 263). Accommodation) Ordinance is hereby repealed.

FIRST SCHEDULE.

[section 31.]

Procedure of Appeal Tribunal.

1. (1) A person appealing from a decision of the Building Authority under Part VI of this Ordinance (hereinafter referred to as the appellant) shall, within three weeks of such decision give notice in writing to the Building Authority stating the substance of the matter relating to his appeal.

(2) Upon receipt of such notice the Building Authority shall convene a meeting of the tribunal.

2. If it appears to the tribunal, after due consideration of any appeal, that no good cause has been shown why an inquiry should be held, it may refuse to hold an inquiry and shall inform the appellant accordingly.

3. (1) The tribunal shall permit the appellant and such other persons as it considers to be prejudiced by the decision, which is the subject of the appeal, to appear and to be heard at the inquiry, to be assisted in the presentation of their cases by other persons and to take such part in the proceedings as the tribunal may think proper:

Provided that no person shall be entitled as of right in the capacity of counsel, solicitor or other paid advocate to conduct the case for the appellant or such other persons by addressing the tribunal or examining or cross-examining witnesses.

(2) For the purposes of sub-paragraph (1) the tribunal may cause such notice to be given to any person or to the public at large as it may think proper.

(3) The inquiry shall be held at such place and time as the tribunal may determine and shall be a private inquiry.

SECOND SCHEDULE.

[section 35.]

Provisions of Ordinance to continue in operation.

<i>Subject Matter and Section.</i>	<i>Amendment.</i>
Lifts. 34.	
Subsoil drainage of open spaces. 70.	Delete from second line the words "section 69" and substitute "regulations".
Water Closets and Latrines. 79 - 85.	
Drainage. 86 & 87 91 & 93 - 98.	

<i>Subject Matter and Section.</i>		<i>Amendment.</i>
Blasting.	102.	Delete from the thirteenth line of subsection (1) the words "Governor in Council" and substitute "Director of Public Works".
Private Streets.	104 - 106.	
Rights of adjoining owners.	110 - 126.	

Passed the Legislative Council of Hong Kong, this 21st day of December, 1955.

R. W. PRIMROSE,
Deputy Clerk of Councils.

(~~Secretariat L/741/52~~)

HONG KONG

No. 69 OF 1955.

L.S.

I assent.

A. G. GRANTHAM,
Governor.

22nd December, 1955.

An Ordinance to amend the Summary Offences Ordinance, Chapter 228.

[1st June, 1956] ^{GNA-50}

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

1. This Ordinance may be cited as the Summary Offences (Amendment) Ordinance, 1955, and shall come into operation on a day to be appointed by the Governor by proclamation in the Gazette.

Short title and commencement.

In operation on 1.6.56., by Proc. No. 2 of 1956.

G.N.A.
50/56.