

STATE OF SABAH

PUBLIC ENTERTAINMENTS ORDINANCE, 1958 (Sabah No. 23 of 1958)

LIST OF AMENDMENTS

<i>Enactment No.</i>	<i>Sections amended</i>	<i>Effective date of amendment</i>
16/1960	6 (5)	1-1-1961
G.N.S. 87/1965	2 (definition of "licensing authority"), 6 (5), 14 (2)	16-9-1963
14/1965	8 (2) (a), 12 (1)	21-12-1965
6/1968	8 (1) (a)	23-8-1968
14/1972	12 (f)	28-12-1972
Act 160	11, 12 (2)	29-8-1975
11/1978	6 (5) (a)	1-1-1979
Act A490	6 (2), (4), 8 (1) (b)	16-5-1981
7/1993	2 (definition of "cinematograph exhibition")	1-1-1994
8/1994	8 (1) (c), (2) (b)	15-9-1994

An Ordinance to provide for the better control of theatres and places of public amusement and theatrical performances.

[1st January, 1961.]

ENACTED BY the Governor of the Colony of North Borneo with the advice and consent of the Legislative Council as follow:

Short title and commencement.

1. This Ordinance may be cited as the Public Entertainments Ordinance, 1958, and shall come into operation on such date* as the Governor may, by notification in the *Gazette*, appoint.

Interpretation.

2. In this Ordinance-

“cinematograph exhibition” means any exhibition of pictures or other optical effects presented by means of a cinematograph, a videotape-player, a record-player, a disk-player or a diskette-player, a laser disk-player or any other similar apparatus and includes the production of any music, speech, noise or other sound whatsoever which accompanies such exhibition;

“grievous hurt” has the same meaning as in the Penal Code† [*F.M.S. Cap. 45.*];

“licensing authority”‡ means in respect of the area of any local authority then such local authority and in respect of any other area then any person whom the Minister may, by notification in the *Gazette*, appoint to issue licences under this Ordinance within any specified area or district;

“place of public amusement” means any place, enclosure, building, vessel, tent, booth

* In force 1st January, 1961 - see G.N.S. 154/1960.

† Penal Code No. 3 of 1959 was repealed by Act A327 which extended to Sabah F.M.S. Cap. 45.

‡ See G.N. 670/1960.

or other erection, covered or otherwise, whether permanent or temporary, where any public amusement is carried on and to which the public have access either free or on payment of money or on any other consideration and includes an amusement park;

“public amusement” means any game, diversion or entertainment of any kind whatsoever provided for the public in which members of the public may take part and includes but not limited to the games or play as enumerated in the Schedule;

“theatre” means any place, enclosure, building, vessel, tent, booth or other erection, covered or otherwise, whether permanent or temporary, where a theatrical performance is performed or presented and to which the public have access either free or on payment of money or any other consideration;

“theatrical performance” means any game, diversion or entertainment of any kind whatsoever provided for the public in which members of the public may not take part and includes a cinematograph exhibition.

2A. The Minister may from time to time by order, publish in the *Gazette*, amend the Schedule by adding or deleting the type of game or play.

Offence to open or keep open a theatre or place of public amusement without a licence.

3. Any person who without or otherwise than in conformity with the conditions of a licence granted under subsection (1) of section 5 opens or keeps open any theatre or place of public amusement shall be guilty of an offence against this Ordinance.

Offence to carry on or assist in carrying on theatrical performance without a licence.

4. (1) Any person who without or otherwise than in conformity with the conditions of a licence granted under subsection (1) of section 6 carries on or assists in carrying on any theatrical performance shall be guilty of an offence against this Ordinance.

(2) No person shall be deemed to carry on or to assist in carrying on any theatrical performance within the meaning of subsection (1) by reason only of his acting or performing in such theatrical performance.

Licence to open a theatre or place of public amusement.

5. (1) The licensing authority may, on receipt of an application and on payment of the prescribed fee, grant to any person a licence to open a theatre or place of public amusement on such conditions as may be specified in the licence. Such conditions shall include—

- (a) in all licences granted under this subsection-
 - (i) a condition specifying the hours during which the theatre or place of public amusement may be kept open; and
 - (ii) a condition that the licensee shall comply with all requirements of any written law applicable to any theatrical performance carried on, or any public amusement provided in, the theatre or place of amusement for which the licence is issued; and
 - (iii) a condition specifying the location and address of the premise; and
 - (iv) a condition that the licensee shall comply with all requirements of any written law applicable to age limit restriction.
- (b) in any licence for a theatre or place of public amusement which is in any enclosed space or building-
 - (i) a condition relating to the maximum number of persons to be admitted at any time;
 - (ii) a condition relating to the arrangement of doors, exits and emergency exits;
 - (iii) a condition relating to the precautions to be observed in cases of fire or in sudden emergency;
 - (iv) a condition relating to the accommodation to be provided for the audience and the performers; and
 - (v) a condition relating to the ventilation and sanitation to be provided.

(2) The conditions to be inserted under the provisions of paragraph (a) of

subsection (1) shall be such that the officer-in-charge of police district may require and the conditions to be inserted under the provisions of paragraph (b) of subsection (1) shall be such as the local authority and any other relevant authority shall have certified to the licensing authority that the building complies with such subsection.

(3) The licensing authority may refuse a licence under subsection (1) in any case in which there is reason to believe that the theatre or place of public amusement in respect of which it is sought will be conducted in contravention of any of the conditions of the licence applied for or in a manner likely to lead to a breach of the peace or to cause obstruction, annoyance or injury to the residents of the locality in which the theatre or place of public amusement is situated.

Licence to carry on a theatrical performance.

6. (1) The licensing authority may, on receipt of an application and on payment of the prescribed fee grant to any person a licence to carry on a theatrical performance on such conditions as may be specified in the licence.

(2) The licensing authority shall not grant a licence under subsection (1) in respect of any theatrical performance until the officer-in-charge of police district has certified in writing that in the case of any cinematograph exhibition authority has been granted under the provisions of the Films (Censorship) Act, 1952 * [Act 35.] and that in all other cases there is no objection to the programme as declared or advertised. If the officer-in-charge of police district shall require any additional fire precautions in respect of any theatrical performance then such conditions as he requires shall be specified in the licence.

(3) The licensing authority may refuse a licence under subsection (1) in any case in which he has reason to believe that the theatrical performance in respect of which it is sought will be carried on in contravention of any of the conditions of the licence applied for or in a manner likely to lead to a breach of the peace or to cause obstruction, annoyance or injury to the residents of the locality in which it is proposed to carry on or if such theatrical performance is in the opinion of the licensing authority indecent, immoral or in any other way improper or is likely to endanger human life or to cause grievous hurt to any person.

* "Films (Censorship) Act 1952" substituted for "Cinematograph Films (Censorship) Act 1952" by virtue of Act A490.

(4) The licensing authority shall refuse a licence in respect of any film as defined in the Films (Censorship) Act, 1952* [Act 35.] which has not been authorised for exhibition under the provisions of that Act.

(5) Notwithstanding the provisions of any other written law, the fees paid for licences granted under this section –

- (a) where the licensing authority is a local authority, shall be payable to the local authority and all of such fees shall be paid into the revenue of the local authority; and
- (b) where the licensing authority is not a local authority, shall be payable to the licensing authority and all of such fees shall be paid into the general revenue of Sabah.

Cancellation of licence.

7. (1) The licensing authority may at any time cancel-
- (a) any licence granted under the provisions of this Ordinance if there has been a breach of any of the conditions subject to which it was granted or any act by the licensee, as such, in contravention of any written law;
 - (b) any licence granted under subsection (1) of section 5-
 - (i) if there has been any breach of the peace, obstruction, annoyance or injury to the residents in the locality in which the theatre or place of public amusement to which the licence refers is situate, caused or brought about by the manner in which the theatre or place of public amusement was conducted; or
 - (ii) if in the opinion of the officer-in-charge of police district, in the case of any public amusement carried on in a place of public amusement to which the licence refers such public amusement is of indecent,

* "Films (Censorship) Act 1952" substituted for "Cinematograph Films (Censorship) Act 1952" by virtue of Act A490.

immoral or improper nature, or is likely to endanger human life or to cause grievous hurt to any person; and

- (c) any licence granted under subsection (1) of section 6 if there has been any breach of the peace, obstruction, annoyance or injury to the residents of the locality in which the theatrical performance to which the licence refers has been carried on or, if in the opinion of the officer-in-charge of police district such theatrical performance, not being a cinematograph exhibition, has been carried on in an indecent, immoral or improper manner or in a manner likely to endanger human life or to cause grievous hurt to any person.

(2) Upon the cancellation under paragraph (b) of subsection (1) of a licence granted in respect of a place of public amusement being an amusement park, the licences of all theatres and places of public amusement situated therein shall be deemed to be cancelled.

(3) Where the licensing authority is a local authority it may delegate to the Chairman or any officer of the local authority its powers under the provisions of this section either generally or for any particular occasion.

(4) Service of notice of revocation of a licence shall be effected by-

- (a) affixing a copy thereof at the place of the entertainment, or
- (b) serving a copy thereof on the person who appears to have the care and management of the place of entertainment, or
- (c) serving a copy thereof on the licensee himself in the case where the licensee and the person referred to in paragraph (b) is not the same person, or
- (d) any combination thereof.

Appeal.

8. (1) Where an application for a licence under subsection (1) of section 6 has been refused upon the grounds that the officer-in-charge of police district has refused his certificate

under the provisions of subsection (2) of section 6 the applicant may appeal against such refusal –

- (a) where the officer-in-charge of police district certifies that his refusal is on the grounds of public security, to the Chief Minister; or
- (b) where the officer-in-charge of police district certifies that his refusal is on the grounds that the application is in relation to a cinematograph exhibition for which no authority has been granted under the Films (Censorship) Act, 1952* [Act 35.], to the appellate authority under such Act;
- (c) where the refusal is on any other grounds, to the Minister of Local Government and Housing.

(2) Where an application for a licence under subsection (1) of section 5 or subsection (1) of section 6 is refused upon any other grounds or any licence is cancelled under the provisions of section 7 the applicant or the licensee respectively may appeal against such refusal or cancellation –

- (a) where the licensing authority is a local authority, to the Minister of Local Government and Housing; or
- (b) where the licensing authority is not a local authority, to the Chief Minister.

(2A) Any appeal made under section 5 and section 6 of this Ordinance shall be made within thirty (30) days of the decision by stating the reason or grounds of appeal and every notice of appeal shall be accompanied with an appeal fee of Ringgit Malaysia fifty only.

(2B) There shall be no appeal on any compound imposed under this Ordinance.

(3) The decision of any appellate authority under this section shall be final.

* "Films (Censorship) Act 1952" substituted for "Cinematograph Films (Censorship) Act 1952" by virtue of Act A490.

Power of entry.

9. (1) Any police officer not below the rank of sergeant or Licensing Authority or any authorised officer may at all reasonable times enter any theatre or place of public amusement or place where any theatrical performance is being carried on in order to see whether the provisions of this Ordinance or the conditions of any licence granted under this Ordinance are being complied with.

(2) Any person preventing or obstructing the entry of any police officer under subsection (1) shall be guilty of an offence against this Ordinance.

Power to close any theatre, place of public amusement or to stop theatrical performance.

10. Any police officer not below the rank of Inspector or any authorised officer, may forthwith take any steps he may deem necessary –

- (a) to close any theatre or place of public amusement which he is satisfied is kept open without, or in contravention of any conditions of, a licence under subsection (1) of section 5; or
- (b) to stop any theatrical performance which he is satisfied is carried on without, or in contravention of any conditions of, a licence under subsection (1) of section 6.

Power to prosecute.

10A. Any person authorised in writing by the Public Prosecutor pursuant to section 377 of the Criminal Procedure Code [Act 593.] may conduct prosecution for any offence under this Ordinance or any rules made thereunder.

Power of seizure and forfeiture.

10B. (1) If any authorised officer of a local authority or any police officer not below the rank of Inspector has reason to believe that any person has committed an offence under this Ordinance or any rule made thereunder, such officer may seize and detain any item, tool, instrument, machinery, equipment or other things whatsoever used or reasonably suspected of having been used in or about the commission of an offence.

(2) All items, tools, instruments, machineries, equipments or other things whatsoever liable to seizure under this Ordinance shall be liable to forfeiture.

Power of entry and investigation.

10C. The licensing authority or any authorised officer, or any police officer not below the rank of Inspector, may without warrant enter any place of entertainment at which an entertainment is being provided or is intended to be provided with a view to ascertaining whether the conditions or restrictions of any licence granted under this Ordinance or the provisions of this Ordinance or any rules made thereunder are being complied with, and may make such investigation and inspection of the place of entertainment and call any person to produce such articles, books, accounts, tickets or other documents or things and to furnish any information as that officer or person may consider necessary for the purpose:

Provided that any person not in uniform purporting to exercise any powers under this section shall on demand produce his written authority to exercise these powers to any person lawfully demanding the same.

Power of closure.

10D. The licensing authority or any authorised officer or any police officer not below the rank of Inspector in exercising the power of entry and investigation under section 10C may, without prejudice to the exercise of the power conferred upon him by that section, forthwith take such steps as he may consider necessary to close any place of entertainment if he is satisfied that there is a breach of the conditions or restrictions of the licence granted under this Ordinance or that the entertainment held therein is in contravention of any of the provisions of this Ordinance or any rules made thereunder.

Power to demand particulars.

10E. The licensing authority or any authorised officer or any police officer not below the rank of Inspector may require any person whom he reasonably believes to have committed an offence under this Ordinance or any rules made thereunder to give his name, identity card number and address.

Power of arrest.

10F. (1) The licensing authority or any authorised officer or any police officer not below the rank of Inspector, may arrest without warrant –

- (a) any person reasonably suspected to have committed an offence against this Ordinance or any rules made thereunder; or
- (b) any person who refuses to give his name, identity card number and address when requested or if there is reason to doubt the accuracy of the name and address given.

(2) Any person arrested under this section shall be taken to a police station within twenty-four hours and a report made thereof.

Search list.

10G. (1) The licensing authority or any authorised officer who seizes any thing under this Ordinance shall prepare a search list of the things or documents seized and forthwith sign the search list.

(2) The licensing authority or any authorised officer shall request the person from whom the things or documents were seized to acknowledge the search list. If any person refused to acknowledge the search list, the licensing authority or any authorised officer shall make comments on the search list of such refusal.

Court to order release or forfeiture of things seized.

10H. (1) An application for an order for the forfeiture or release of any thing seized shall be made to the court before which the prosecution with regard thereto has been held and the court shall order forfeiture if it is proved to its satisfaction that an offence against any provisions of this Ordinance or any rules made thereunder has been committed and that the things were the subject matter of or were used in the commission of the offence, notwithstanding that no person may have been convicted of such offence.

(2) All things forfeited shall be delivered to the licensing authority or the police as the case may be, and shall be disposed of in accordance with the directions of the licensing

authority or the police officer

Things seized in respect of which there is no prosecution deemed to be forfeited if not claimed within one month.

10I. (1) If there be no prosecution with regard to any thing seized under this Ordinance, such things shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless a claim thereto is made before that date in the manner hereinafter set forth.

(2) Any person asserting that he is the owner of any thing seized under this Ordinance and that it is not liable to forfeiture shall, either personally or by his agent authorized in writing, give written notice to the licensing authority or any authorised officer that he claims the same.

(3) On receipt of a notice under subsection (2), the licensing authority may direct that such things be released on bond and that the manner be referred to a Court.

(4) The Court shall issue a summons requiring the person asserting that he is the owner of the things seized from whom they were seized to appear before him and upon their appearance or default to appear, after due service of the summons being proved, the Court shall proceed to examine the claim and on proof that an offence against this Ordinance or any rules made thereunder has been committed and that such things were the subject matter of or were used in the commission of such offence, shall order the same to be forfeited or, in the absence of such proof, shall order its release.

Obstruction.

10J. Any person who obstructs the licensing authority or any authorised officer or any police officer lawfully exercising any power conferred on him by this Ordinance shall be guilty of an offence and shall, on conviction be liable to a fine not exceeding Ringgit Malaysia fifty thousand or to imprisonment for a term not exceeding one year or to both.

Compounding of offences.

10K. (1) The licensing authority or any authorised officer or police officer may compound

any offence against this Ordinance and any rules made thereunder. Such compound shall not exceed fifty per centum of the maximum fine with which the offence is punishable.

(2) Any payment of the compound shall be made to the licensing authority within seven days of the receipt of the compound notice. Upon receipt of the payment under subsection (1), no further proceeding shall be taken against such person in respect of such offence and any thing seized in connection with the offence shall be deemed to be forfeited.

(3) Any monies paid to the licensing authority pursuant to this section shall be paid into and form part of the fund constituted under any law relating to local authority and if the compound is made by the police under this section, such monies shall be paid into and form part of the Federal Consolidated Fund.

General penalty.

10L. Any person found guilty of an offence against this Ordinance or any rules made thereunder for which no penalty is expressly provided for shall, on conviction, be liable to a fine not exceeding Ringgit Malaysia fifty thousand or to imprisonment for a term not exceeding one year or to both.

Penalty.

11. Any person who commits any offence against this Ordinance or fails to comply with any of the conditions of any licence granted under this Ordinance shall be liable to a fine of not exceeding Ringgit Malaysia fifty thousand only or to a term of imprisonment not exceeding one year or to both fine and imprisonment.

Rules.

12. (1) The Minister of Local Government and Housing may make rules* for carrying out the purposes of this Ordinance, and in particular may by such rules provide for all or any of the following matters, that is to say –

* Theatres and places of Public Amusement Rules (G.N.S. 176/1949 as amended by G.N.S. 200/1960) at page 664 of Volume V at the 1953 Revised Edition. Public Entertainment (Prohibition on Smoking and Cigarettes Advertisement) Rules 1973.

- (a) the form of licences to be granted under this Ordinance and the fees to be paid for such licences;
- (b) the conduct of theatres or places of public amusement in a decent and orderly manner and for securing the decent and orderly behaviour of all persons visiting such theatres or places of public amusement;
- (c) the prevention of gambling in theatres or places of public amusement;
- (d) prohibiting the playing of any game or class of game or the use of any particular kind of apparatus in theatres or places of public amusement;
- (e) for conforming with the requirements of any conditions of licences; and
- (f) the prohibition, restriction or regulation of smoking and the advertisements of cigarettes in theatre or places of public amusement.

(2) Such rules may provide that the breach or contravention of any rule is an offence against such rule and may provide a penalty not exceeding Ringgit Malaysia fifty thousand or a term of imprisonment not exceeding one year or to both fine and imprisonment for the commission of any such offence.

Saving of powers of local authority.

13. Nothing in this Ordinance contained shall in any way affect any power conferred upon a local authority by any written law to make by-laws for the control and supervision of theatres or places of public amusement which are not inconsistent with the provisions of this Ordinance.

Exemption.

14. (1) This Ordinance shall not apply to horse-racing or athletic meetings.

(2) The Yang di-Pertua Negeri may by notification in the Gazette exempt from all or any of the provisions of this Ordinance any public amusement or theatrical performance.

Repeal.

15. The Theatres and Places of Public Amusement Ordinance [Cap. 140.] is repealed:

Provided that –

- (a) the Theatres and Places of Public Amusement Rules, shall be deemed to have been validly made under the provisions of the repealed Ordinance and shall remain in force as if made under section 12 of this Ordinance; and
- (b) all fees collected under Part I of such Rules since their enactment shall be deemed to have been validly collected.

SCHEDULE

(Section 2)

TYPES OF GAMES OR PLAY

- (a) All sort of play on the stage or musical play on the stage or hall with the exception to those related to customary cultural or religious activities.
- (b) Opera.
- (c) Circus.
- (d) All type of dance /discotheque where public have accessed to it.
- (e) Boxing and wrestling competition.
- (f) Wayang Kulit (Shadow Play).
- (g) Bowling alley.
- (h) All games or music play at public place except those related to custom, culture and also religion.
- (i) Bagatelle, pintables, miniature billiard and other similar games.

- (j) Shooting toys shop and all games which require skill or games which generate profit or games provided at entertainment places.
- (k) Singing bird competition.
- (l) Beauty animal competition.
- (m) Fun fair.
- (n) Computer games including internet game by means of computer and slot machine.
- (o) Juke box.
- (p) Video theatres.
- (q) Mobile movies includes open air movies.
- (r) Skittle pools and snookers.
- (s) Karaoke.
- (t) Billiard shop or any games similar to it whether at private club or public place.
- (u) Mahjong game whether organised at private club or public place.