



Application for Waiver for Testing Laboratory Use in part(s) of or the entire Existing Industrial Building

An owner of part(s) of or an entire existing industrial building¹ (hereinafter referred to as the “Industrial Premises”) who wishes to apply for a waiver to use the Industrial Premises for testing and/or calibration laboratory (excluding any laboratory providing clinical testing which requires humans or animals to undergo checking at the Industrial Premises)² (hereinafter referred to as a “testing laboratory”) use may wish to refer to this Practice Note before submitting an application to the Lands Department (“LandsD”) with effect from 1st February 2016 until such time as LandsD may determine.

2. An owner of the Industrial Premises may apply for a waiver at nil waiver fee for the use of the Industrial Premises or any part thereof as testing laboratory in addition to the use permitted under the Government lease of the lot, for the lifetime of the existing industrial building or until expiry or termination of the said Government lease, whichever is the earlier (“Testing Laboratory Waiver”). An application should be made only if testing laboratory use is permitted by the current land use zoning of the site where the Industrial Premises are situated on the statutory plans, or granted with planning permission by the Town Planning Board (“TPB”), or is considered as an existing use under the provision of the statutory plans. Where the testing laboratory use in the Industrial Premises requires planning permission from the TPB, such TPB permission must be obtained before the relevant application is submitted to LandsD and the owner must submit proof of such permission at the time of application. Laboratories providing clinical testing services requiring humans or animals to undergo checking at the Industrial Premises are not eligible to apply for such Testing Laboratory Waiver at nil waiver fee.

3. Approval for the grant of the Testing Laboratory Waiver is subject to such terms, covenants and conditions as may be imposed by LandsD, including but not limited to the following:

¹ An industrial building refers to a building lawfully erected on a lot which, under the lease conditions, shall not be used for any purpose other than for industrial and/or godown purposes. Industrial buildings do not include special factories such as those located in storage premises in container terminals and flatted factories built by the Hong Kong Housing Authority, or lots for special industries such as cargo handling uses, ship building and repairing, oil storage and refining and production of associated chemical by-product, manufacture of polystyrene plastics, manufacture and storage of chlorine, hydrogen and textile chemicals, etc. The application must be made in respect of an existing building or part(s) thereof but cannot be submitted in respect of a vacant site.

² In determining whether a use of the Industrial Premises or any part thereof falls within testing laboratory use, the decision of the Director of Lands shall be final and binding.

- (a) any building works required for the purpose of the permitted testing laboratory use under the Testing Laboratory Waiver shall in all respects comply with the prevailing provisions of the Buildings Ordinance;
- (b) the permitted use as testing laboratory under the Testing Laboratory Waiver shall not prejudice any of the rights and remedies under the Deed of Mutual Covenant of the industrial building (if applicable); and
- (c) the owner shall indemnify and keep indemnified the Government, its officers and servants, from and against all actions, costs, claims and demands arising directly or indirectly out of or in connection with the use of the Industrial Premises or any part thereof for the purpose of testing laboratory.

4. The Testing Laboratory Waiver, if approved by LandsD, shall be executed by the owner of the Industrial Premises as well as by the mortgagees, chargees and purchasers who have entered into an agreement for the sale and purchase of the Industrial Premises. The Testing Laboratory Waiver will primarily waive the Government's right to enforce the user restriction in the Government lease for the Industrial Premises against testing laboratory use during the validity period of the Testing Laboratory Waiver. If the owner of the whole industrial lot where the Industrial Premises are situated, after obtaining a Testing Laboratory Waiver of the Industrial Premises, wishes to modify any other terms contained in the Government lease, a separate lease modification³ application will have to be submitted and will be processed by LandsD separately.

5. The owner shall pay an administrative fee as and when demanded by LandsD. The administrative fee will not be refunded if the owner either withdraws the application or is unable to duly execute the documentation for the application for any reason to the satisfaction of LandsD.

6. The owner is reminded of the need to approach other relevant authorities and departments, such as the Fire Services Department and the Building Authority, regarding any other approvals or licences that may be required under any Ordinances, by-laws or regulations that are in force from time to time, whether or not the proposed uses that may be permitted under the Testing Laboratory Waiver would involve any alteration, structural or otherwise, to the industrial building.

7. The Testing Laboratory Waiver will have effect only for the lifetime of the building in existence at the date of issue of the Testing Laboratory Waiver or until the Government lease of the lot expires or is terminated, whichever is the earlier. Notwithstanding the Testing Laboratory Waiver, a premium or waiver fee at full market value (i.e. assessment will be made without the benefit of the Testing Laboratory Waiver) will be payable if any lease modification or temporary waiver³ is applied for and approved. During the validity period of the Testing Laboratory Waiver, if the owner wishes to change any of the Testing Laboratory Waiver conditions, including any change of the area to be covered under the Testing Laboratory Waiver, he should submit an application to LandsD, which may, at its sole and absolute discretion, approve or reject and any approval granted may be made upon such terms and conditions (including the payment of any premium or charge) as it may impose.

³ The lease modification or temporary waiver may take such form and contain such conditions as LandsD may consider appropriate for the case, including, among others, payment of a premium or a waiver fee as appropriate.

Other Points to Note

8. The application should be submitted to the relevant District Lands Office of LandsD at the address as set out in the LandsD's website (<http://www.landsd.gov.hk/en/about/enquiries.htm>). The owner may wish to refer to Appendix I for a sample application and Appendix II for a note on the use of the personal data required to be provided in the application.

9. The owner is advised to engage competent professionals to assist in submitting the application.

10. Notwithstanding that there is an existing waiver in respect of the Industrial Premises or any part of the Industrial Premises ("Existing Waiver"), an application for a Testing Laboratory Waiver for or including those units may be submitted under paragraph 2 hereof and the applicable administrative fee shall be paid as and when demanded by LandsD. The Existing Waiver may be terminated by agreement simultaneously upon the execution of the Testing Laboratory Waiver, and notwithstanding any conditions in the Existing Waiver to the contrary, no waiver fees paid for the Existing Waiver will be refunded and no notice of termination will be given or required. There will be no refund of any administrative fees paid under the Existing Waiver.

11. Every application submitted to LandsD pursuant to this Practice Note will be considered on its own merits by LandsD at its absolute discretion acting in its capacity as a landlord. The amount of any administrative fee mentioned herein will be determined by LandsD from time to time. This Practice Note shall not constitute any representation on the part of the Government or give rise to any expectation on the part of the owner that any application submitted to the LandsD will be processed or approved.

12. This Practice Note is issued for general reference purposes only. All rights to modify the whole or any part of this Practice Note are hereby reserved.



(Ms Bernadette Linn)
Director of Lands
25 January 2016