

**Extract of minutes of meeting of the
Panel on Food Safety and Environmental Hygiene
held on 8 January 2001**

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II. Proposed fixed penalty for minor cleansing offences

[LC Paper No. CB(2) 628/00-01(02)]

23. Introducing the paper, DS(EF) said that the Administration proposed to fix the level of penalty for minor public cleansing offences at \$600 having regard to the following factors -

- (a) The average fines imposed by the court in 1999 for littering and spitting were \$468 and \$570 respectively; and
- (b) The two former provisional municipal councils (PMCs) had recommended a penalty of \$600 for first-time offenders.

24. DS(EF) said that the level of penalty under the proposed system should be sufficiently high to achieve the desired deterrent effect without arousing too much public objection. He added that these kinds of cleansing offences were wholly avoidable and members of the public need not put in extra efforts to avoid committing such offences. He also informed members that there were similar penalties in Singapore (S\$150), the United Kingdom (£25) and the Victoria State of Australia (A\$500).

Level of fixed penalty

25. Mr WONG Sing-chi considered that the level of fixed penalty at \$600 was set too high as littering was a less serious offence compared to speeding that might cause accidents and injuries. Considering that the penalty for serious speeding was only \$570, he suggested that the fixed penalty for littering could initially be set at \$320, which was the same level as that for minor traffic offences. If the level was found to have insufficient deterrent effect after a period of implementation, it could still be increased by resolution of the LegCo. In this connection, Mr IP Kwok-him also asked whether there was information that the present penalty was inadequate or ineffective to deter minor public cleanliness offences such as spitting.

26. DS(EF) explained that the current situation was far from satisfactory. As offenders were currently prosecuted by summons, the process was lengthy and the

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amounts of fines varied. While the maximum fine stipulated in the relevant legislation ranged from \$5,000 to \$25,000, the actual fine imposed were often too low to achieve any deterrent effect. He said that Mr WONG Sing-chi's proposed level at \$320 was even lower than the average fine currently imposed by the court for littering (\$468) and spitting (\$570). He added that spitting was also a serious offence because it could give rise to the spread of infectious diseases and pose a risk to public health. He further said that the level of penalty could not be too low in order to provide sufficient deterrence. The level of fixed penalty at \$600 was proposed having regard to the average fine imposed for such offences by the court.

27. Mr IP Kwok-him noted that the proposed fixed penalty system would bring about more efficient and effective enforcement against minor public cleanliness offences as these would no longer be dealt with by the court. He asked whether the proposal would have any staff implications. DS(EF) said that the Administration would make necessary staff arrangements and provide adequate training to the enforcement staff for implementation of the proposed system.

Enforcement

28. Mr WONG Yung-kan sought clarification on the offences to be included under the fixed penalty system. He asked whether the styrofoam containers which were widely used by the fishing industry for carrying goods (such as fish fry) at typhoon shelters but blown away into the harbour would be regarded as throwing litter into the sea. He expressed concern as to how an enforcement officer could judge whether the styrofoam containers were intentionally dumped into the sea or not. DS(EF) said that he would relay Mr WONG's concern to Marine Department which was responsible for enforcement against marine littering. He advised that all enforcement staff would have to attend a training programme which would include enforcement standards and other operational issues.

29. Mr WONG Yung-kan said that as no refuse collection vessel was provided at some fishing grounds, there were problems for the fishermen there to dispose of the refuse. He pointed out that the delineation of responsibilities between Marine Department and the former provisional municipal councils in dealing with marine refuse was unclear and improvement was required for these grey areas.

30. DS(EF) responded that one main objective of the Clean Hong Kong Campaign was to step up cleansing operations in grey areas at both territory-wide and district levels. He stressed that enforcement actions would be taken with sense and reasonableness.

31. As the proposed fixed penalty system also covered the offence of illegal display of bills or posters, Mr WONG Yung-kan asked whether this would pose difficulties to candidates of LegCo or District Council elections in finding suitable locations for the display of posters or banners. DS(EF) clarified that candidates standing for these

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elections could continue to apply for permission from Government to display posters or banners at public places. He said that the proposal targeted at people who displayed bills and posters of a commercial nature without authorisation at public places. He explained that numerous complaints had been received in this connection. As the unauthorised display of bills and posters had an adverse impact on the city environment, it was necessary to step up prosecution.

32. Mr SIN Chung-kai said that in the early 90s, the then Municipal Councils had proposed a fixed penalty system for minor public cleansing offences. However, the proposal met with strong opposition from the then Urban Services Department (USD) and Regional Services Department (RSD), which pointed out that there would be many implementation problems and possibility for bribery. Mr SIN asked whether the Administration had proposed measures to address these problems.

33. DS(EF) said that the current proposal was introduced on the recommendation of the Steering Committee on Healthy Living in December 1998 . The current proposal was different from the previous one in the following ways -

- (a) the proposed fixed penalty system would cover only three minor public cleansing offences while the former Municipal Councils recommended eight types of minor public cleansing offences; and
- (b) the current proposal did not adopt a two-tier penalty system for first and repeated offenders in order to simplify the enforcement procedures.

DS(EF) said that training would be provided to enforcement officers and this would cover anti-corruption training, as well as conduct and discipline. In response to the Chairman, DS(EF) agreed to provide more detailed information on Mr SIN's question when the Bill was introduced into the Council.

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34. Mr Michael MAK said that there were often disputes in the enforcement of minor public cleanliness offences. He considered that the Administration should provide detailed guidelines to enforcement officers on ways to avoid conflicts when performing their duties. He further said that there should be appropriate use of manpower resources for the enforcement of the proposed fixed penalty system. Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) (DD(EH)) explained that at present enforcement officers often worked in pairs. Prosecution action could be taken if an officer witnessed the commission of an offence. She added that in the past year, more in-depth training had been provided on the relevant legislation, the prosecution procedure and gathering of evidence, etc.

35. As regards the power to inspect the Hong Kong Identity Card (HKID) of a person suspected to have committed a minor public cleansing offence, DD(EH) said that under the existing system, enforcement officers did not have such power and they

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could only ask for sight of the suspect's proof of identity. If the suspect did not cooperate, the enforcement officer might call for police assistance.

36. Mr IP Kwok-him was of the view that, except for "beating/cleaning carpet in public places", the proposed fixed penalty system should cover all of the minor public cleansing offences recommended by the Steering Committee on Healthy Living in 1998 as out in paragraph 2 of the paper. He asked why only three minor public cleansing offences were included in the present proposal. The Chairman commented that dog fouling was also a nuisance and might worth including in the proposed fixed penalty system. DS(EF) explained that the present proposal focused on those priority areas which were relatively minor in nature and were easy to enforce. As regards the other public cleansing offences not covered by the proposed system, they could still be prosecuted under the relevant ordinances. He added that consideration could be given to extending the proposed fixed penalty system to cover other minor public cleansing offences after the system had been put into practice for some time.

37. Mr IP Kwok-him said that he had received many complaints about dog fouling and he considered that this should be included in the fixed penalty system. The Chairman agreed with Mr IP. The Administration noted the suggestion.

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