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12 May 2001

Mrs Constance LI
Clerk to Bills Committee
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2509 0775)

Dear Mrs Li,

**Bills Committee on
Fixed Penalty (Public Cleanliness Offences) Bill**

Thank you for your letter of 28 April. Please find below our responses to the questions raised by the Bills Committee.

- (a) To impose additional penalty if an offender fails to pay the fixed penalty within 21 days; and to require him/her to pay also the costs for recovery of such payments if the payment is still not settled within 10 days after the demand notice is issued and if he/she has not indicated his/her wish to dispute liability

To increase the deterrent against late payment and to penalize offenders who ignore a court order for ordering payment, we generally agree with Members that a heavier fine should be imposed in these cases. The Bill now provides for a heavier penalty in the following circumstances : (i) a double penalty for offenders who fail to pay a fine and do not indicate dispute of liability and an order under clause 7 is thus made by the court ordering him to pay; (ii) a

double penalty plus costs for offenders who dispute liability but offer no defence or a defence which is frivolous or vexatious (clause 11); (iii) a double penalty plus a fixed amount of \$500 by way of costs for offenders who indicate dispute of liability but decide to withdraw before commencement of proceedings (clause 12); and (iv) a double penalty plus costs of the application of a distress order for offenders who fail to make payment in respect of a court order issued under clause 7 and who have not indicated dispute of liability (clause 13).

After revisiting the penalties under different circumstances, our initial view is that a heavier fine can be imposed on (i) late payment after the initial 21 days, and (ii) accordingly, in connection with a court order issued under clause 7, and (iii) payment in connection with a distress order issued under clause 13 to reflect not only late payment but the very act of ignoring notices/reminders/order for payment. In addition, as I have explained at the last Bills Committee meeting, according to the experience of the Judiciary, the process of distress is an inefficient, time-consuming, costly and painstaking way of recovering payment and thus to ensure adequate deterrent, we will also take the opportunity to consider following the practice in connection with non-payment of penalties of traffic contraventions to allow an additional channel for the court to impose imprisonment as appropriate. We would like to consult the Prosecution Division of the Department of Justice further and would revert to Members of our proposal at the next meeting.

- (b) To provide a procedure for offenders who cannot afford to pay the fixed penalty to seek a review on compassionate grounds within the 21-day period

We do not think it desirable to allow for waiver/deduction on compassionate grounds within the 21-day period. Besides the difficulty faced by the enforcement departments to determine whether a particular application for waiver/deduction is genuine or not, the proposal will give the enforcement departments too much

discretionary power that may be opened to abuse or corruption. More importantly, the proposal goes against the spirit of having a penalty that is fixed.

As regards the suggestion of whether an offender can seek a review of the penalty before a magistrate within the 21-day period, as the Bill now stands, the magistrate only comes in when an application for an order for payment under clause 7 is made or a summons is issued and served in connection with dispute of liability under clause 10. Imagine the likely amount of additional workload on the court and possible confusion and perceived unfairness as a result of having differential treatment on compassionate grounds if some offenders can seek a waiver/deduction. In any case, an offender has a right of not discharging his liability by way of payment of the fixed penalty and put his case before the magistrate if he wishes to dispute liability.

(c) Verification of offender's address

To ensure effective prosecution, it is necessary for the enforcement departments to obtain the right address of the offender concerned. To this end, we will consider the following administrative and legislative measures : (i) after taking down the address of the offender, enforcement officers may request the offender to state again the address for verification purpose ; (ii) enforcement officer should show the address written down in the fixed penalty notice to the offender for verification. A process of verification can be made such as requiring the offender to sign and confirm; (iii) to request the offender to provide contact telephone number for verification purpose or for future contact where necessary ; and (iv) to make the supply of wrongful address an offence under the Bill.

(d) Jurisdiction of the six enforcement departments

The jurisdiction of the enforcement staff (whether it is a geographical distinction or in relation to the nature and type of offence) has already been provided for in the source legislation. Besides,

administratively speaking, each department by its set-up has already had a clear boundary and jurisdiction of its own such as the Leisure and Cultural Services Department looking after leisure/culture venues and the Agriculture, Fisheries and Conservation Department taking care of country parks. The Bill is not an appropriate place to further elaborate the respective jurisdictions of the departments in respect of the scheduled offences. However, we share Members' concern and would spell out clearly the respective jurisdictions in the operation guidelines.

(e) Enforcement actions taken by off-duty officers

To avoid abuse, only officers on duty will take enforcement action against littering offences. There is no question of off-duty officers taking enforcement action as and when he likes. As most enforcement departments have arrangements for their staff to work on a shift system or are required to work irregular/odd hours for operational need, there is no question of no enforcement action can be taken by officers on-duty during non-office hours. We will spell this out clearly in the operation guideline.

(f) Request the Police to participate in enforcing the proposed fixed penalty system

We are liaising with the Police and will revert to the Bills Committee as soon as possible.

(g) Empower other public officers in Housing Department to take enforcement actions in public housing estates

We have consulted the Housing Department and their view is that for the sake of consistency and ensuring the quality/credibility of the enforcement team, it is desirable to have the same grades of officers empowered to issue the proposed Fixed Penalty Notices and the existing Form 1As against littering offences. As explained at the last

Bills Committee meeting, the Housing Department will ensure the deployment of appropriate manpower to enforce the fixed penalty system.

The draft Committee Stage amendments to include the offence of dog fouling in Schedule 1 is attached for the Bills Committee's consideration.

The following officers will attend the 3rd Bills Committee meeting on 15 May:

Environment and Food Bureau

Ms Eva TO, Principal Assistant Secretary (A)2

Food and Environmental Hygiene Department

Miss Sarah WU, Deputy Director (Environmental Hygiene)

Mr W H CHEUK, Assistant Director (Headquarters)

Department of Justice

Ms Fanny IP, Senior Assistant Law Draftsman

Ms Frances Hui, Senior Government Counsel

Yours sincerely,

(Ms Eva TO)

For Secretary for the Environment and Food

Clause

Amendment Proposed

Schedule 1 By adding immediately after item 3 -
"3A. Section 13 Fouling of street by dog faeces or urine \$600".

Schedule 2 In column 1 -

- (a) in the entry opposite to "Director of Food and Environmental Hygiene", by adding ", 3A" after "3";
- (b) in the entry opposite to "Director of Housing", by adding ", 3A" after "3";
- (c) in the entry opposite to "Director of Leisure and Cultural Services", by adding ", 3A" after "3".