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Panel on Food Safety and Environmental Hygiene

Background Paper prepared by Legislative Council Secretariat

Fixed penalty system for minor public cleansing offences

Purpose

This paper summarises the discussion of the Legislative Council (LegCo) since the 2000/01 session on the fixed penalty system for minor public cleansing offences.

Discussion by the Panel on 8 January 2001

2. Prior to introducing the legislative proposal providing for a fixed penalty system for minor cleanliness offences, the Administration briefed the Panel on Food Safety and Environmental Hygiene on the proposal on 8 January 2001. The Administration informed the Panel that it had studied the proposed two-tier fixed penalty system for minor public cleanliness offences recommended by the former Joint Provisional Urban Council/Provisional Regional Council Keep Hong Kong Clean Steering Committee. The Administration subsequently came to a view that in order to reinforce the Administration's efforts to clean up the city, a fixed penalty system covering three most common minor cleanliness offences, viz. throwing litter in public places and into the sea, spitting in public places, and unauthorised display of bills or posters, should be introduced. As regards other public cleanliness offences not included in the fixed penalty system, they would continue to be prosecuted under the relevant existing legislation.

3. A few members of the Panel had expressed concern about the proposed level of fixed penalty which was fixed at \$600. A member pointed out that it was slightly higher than the fines for some common traffic offences (\$320 and \$450) and the average fine imposed by the Court for littering (\$468) and spitting (\$570). The Administration had explained that the penalty should be set at a level sufficient to achieve the desired deterrent effect without arousing too much public objection.

4. The Panel had also discussed the scope and the enforcement aspects of the proposed fixed penalty system. Some members were of the view that "dog fouling" should be included in the fixed penalty system. A member also expressed concern about the definition of "throwing litter into the sea" and whether spitting into the sea would also be covered by the fixed penalty system.

5. Some Panel members had raised concern about the enforcement aspects, such as whether there would be "grey areas" which might not fall within the jurisdiction of any particular enforcement department. Members also urged the Administration to provide adequate training and guidelines to enforcement staff on the procedures such as checking of proof of identity and collecting evidence, and also measures to avoid conflicts and to prevent bribery.

Discussion by the Bills Committee

6. The Fixed Penalty (Public Cleanliness Offences) Bill was introduced into the Legislative Council on 28 February 2001, and a Bills Committee was formed to examine the Bill in detail. The Bills Committee provided a report (LC Paper No. CB(2) 1877/00-01) to the House Committee on 22 June 2001. The Bill was subsequently passed by the Council on 12 July 2001 with amendments. The Ordinance will come into operation on a date to be appointed by the Secretary for the Environment and Food by notice published in the Gazette.

7. The enacted Ordinance has incorporated suggestions made by the Bills Committee, such as including the offence of "Fouling of street by dog faeces" and empowering the Police to issue fixed penalty notices. The fixed penalty system as provided in the Ordinance has the following main features -

- (a) A person who is committing or has committed certain minor public cleanliness offences as listed in Schedule 1 to the Ordinance (**Appendix I**) may discharge his liability to conviction for the offences by the payment of a fixed penalty. The penalty is fixed at \$600 and may be amended by resolution of the Legislative Council.
- (b) Apart from the Police, designated public officers in six government departments (**Appendix II**) are empowered to issue fixed penalty notices for those scheduled public cleanliness offences which are within their respective responsibilities.
- (c) An authorised public officer is empowered to require a person to produce proof of identity for inspection, and may arrest him if he fails to comply with the requirement without reasonable excuse.

- (d) A person who wants to dispute liability must notify the department which issues the fixed penalty notice.
- (e) A fixed penalty notice may be withdrawn by the issuing department after review.
- (f) If a person does not pay the fixed penalty within 31 days (i.e. 21 days after the issue of a fixed penalty notice plus 10 days after the issue of a demand note) and makes no indication to dispute liability, the enforcement department may apply to a magistrate for an ex parte order to be issued. The person will be required to pay double penalty plus an additional payment of \$300 to recover the cost of issuing the court order.
- (g) If a person disputes liability within the specified period, the enforcement department will apply for issue of summons and arrange for a court hearing.
- (h) A person who knowingly provides false or misleading information commits an offence and is liable on conviction to a maximum fine of \$5,000 and imprisonment for six months.

Concerns raised by the Bills Committee requiring follow-up by the Administration

8. The Bills Committee had discussed at length the enforcement of the fixed penalty system and had urged the Administration to take necessary actions to address the following concerns raised by members before the Ordinance came into operation.

Guidelines on enforcement

9. The Bills Committee was very concerned about the consistency in enforcement as 45 grades (over 10 000 public officers) in seven government departments (including the Police) were empowered to issue fixed penalty notices. The Administration had undertaken to issue guidelines on enforcement for all authorised officers in different departments, including procedures on verification of identity, power of arrest, as well as the need to explain to the offender his rights to dispute liability and to caution him about the consequences of non-compliance with the requirements in the Bill. The guidelines should also include gathering of evidence, dealing with confrontation, and conduct and discipline.

10. The Bills Committee had also expressed concern that some of the authorised officers were not uniformed staff and this might cause confusion to the public. The Administration had explained that all authorised officers were required to carry their warrants while on duty, and persons who were issued fixed penalty notices could request to see the warrants of the authorised officers

or check their identity with the enforcement department.

11. The Bills Committee had also expressed concern about the enforcement in public housing estates, marine areas and littering black spots.

Training

12. The Bills Committee had suggested that the enforcement officers should receive training on how to handle conflicts and disputes, and how to deal with old people, children and the illiterate to avoid misunderstanding. The Administration had agreed to incorporate these in the training for enforcement officers.

Public education and publicity

13. The Bills Committee had requested the Administration to step up publicity to enable the public to understand the provisions of the Bill before it came into operation. The Administration's publicity efforts must also cover the airport and control points in order to alert visitors to the fixed penalty system for littering offences.

Preparation for the implementation of the fixed penalty system

14. Members may wish to take note of the Bills Committee's concerns in paragraphs 9-13 above in discussing the preparatory work for the implementation of the fixed penalty system for the four types of minor public cleanliness offences.