

For discussion
On 27 May 2002

LegCo Panel on Food Safety and Environmental Hygiene

**OBSTRUCTION AND NUISANCES CAUSED
BY ILLEGAL SHOP EXTENSIONS**

PURPOSE

This paper informs Members of the relevant legislation governing illegal shop extension and the enforcement actions taken by the Food and Environmental Hygiene Department (“FEHD”) in tackling the problem.

BACKGROUND

2. Illegal shop extensions are commonly found in streets in Hong Kong. They take different forms, including -

- (a) Operators displaying and selling merchandises outside their shops, occasionally with permanent structures erected;
- (b) Shop owners occupying pavements temporarily for loading and unloading of goods; and
- (c) Food business operators placing their food stands, cooking utensils, tables and chairs outside the approved boundaries of the food premises.

These extensions reduce the street and road space causing inconvenience to pedestrians and road users. Extensions under (c) above also cause environmental hygiene problems.

LEGISLATION

3. Illegal occupation of public pavement and extensions is an offence. Depending on its nature, the following ordinances and/or regulations may be

employed to restrict and control such activities -

(a) Summary Offences Ordinance (Cap. 228)

Section 4A of the *Summary Offences Ordinance (Cap. 228)* provides that any person who sets out any thing which obstructs, inconveniences or endangers any person or vehicle in a public place shall be guilty of an offence. The maximum penalty is a fine of \$5,000 or imprisonment for three months.

(b) Section 22(1)(a), Public Health and Municipal Services Ordinance (Cap. 132)

Section 22(1)(a) of the *Public Health and Municipal Services Ordinance (Cap. 132)* states that any person who obstructs any scavenging or conservancy operation shall be guilty of an offence. The maximum penalty on conviction is a fine of \$5,000. A daily penalty of \$50 is also applicable.

(c) Section 83B, Public Health and Municipal Services Ordinance (Cap. 132)

Section 83B(1) of Cap. 132 provides that no person shall hawk in any street without a licence. Occupying pavements for the display and sale of goods by shop owners may be regarded as illegal hawking. The maximum penalty is a fine of \$5,000 and imprisonment for one month on first conviction, and a fine of \$10,000 and imprisonment for six months on subsequent convictions. A daily penalty of \$300 is also applicable.

(d) Section 13, Food Business Regulation (Cap. 132 sub. leg.)

Section 13 of the *Food Business Regulation (Cap. 132 subsidiary legislation)* (“FBR”) states that food businesses shall not use open spaces (such as yard, alley, street, roof top or open deck) for the preparation or storage of open food or the cleansing or storage of cooking utensil. The maximum penalty is a fine of \$10,000 and imprisonment for three months. A daily penalty of \$300 is also applicable.

(e) Section 34C, Food Business Regulation (Cap. 132 sub. leg.)

Under Section 34C of FBR, operators are not allowed to operate food businesses beyond the confines of licensed food premises. The maximum penalty is a fine of \$10,000 and imprisonment for

three months. A daily penalty of \$300 is also applicable.

(f) Land (Miscellaneous Provisions) Ordinance (Cap. 28)

Section 6 of the *Land (Miscellaneous Provisions) Ordinance (Cap. 28)* provides that relevant authorities may serve a notice requiring the unlawful occupation of unleased land to cease. Any person who does not cease to occupy the land after such a notice has been served shall be guilty of an offence. The maximum penalty is a fine of \$10,000 and imprisonment for six months.

ENFORCEMENT

4. Several departments are involved in the enforcement of the above legislative provisions, including FEHD, the Police and the Lands Department. Depending on the extent and seriousness of the obstructions, the nuisances caused and the associated street management problems arising therefrom, it is often more effective for the concerned Government departments to plan and mount joint actions under the guidance and coordination of District Management Committees (“DMCs”). DMCs are chaired by the respective District Officers and have core departments such as FEHD, the Police, Lands Department and Transport Department as members, with advice and input from the Chairmen and Vice-chairmen of District Councils who are standing members.

5. Insofar as FEHD is concerned, our primary consideration is the maintenance of environmental hygiene. As such, enforcement priority is given to cases involving obstruction to scavenging operations (actionable under section 22(1)(a) of Cap. 132), illegal hawking activities (actionable under section 83B(1) of Cap. 132) and food businesses operating beyond the confines of licensed premises (actionable under Section 34C of FBR). Enforcement actions against street obstruction caused by illegal shop extensions are also taken from time to time under section 4A of Cap.228.

6. In 2001, FEHD instituted a total of 11,316 prosecutions against the offences set out in paragraph 5 above. In addition, some 1,297 blitz operations against illegal shop extensions were mounted.

FIXED PENALTY SYSTEM

7. At a meeting between LegCo Members and members of the Sham Shui Po District Council held on 14 June 2001, a suggestion was made that a fixed penalty system should be introduced to address the problem of illegal shop extensions.

8. For the introduction of any fixed penalty system, the Administration would need to assess the existing enforcement mechanism with particular regard to whether a change is justified and necessary. The punitive and deterrent effects of the two systems would also need to be evaluated.

9. In the case of shop extensions, the offences committed vary and so is the extent of obstructions and nuisance caused. The current system allows the enforcement agencies to assess the impact of the obstructions and the potential danger the obstructions pose to drivers and pedestrians before instituting prosecution actions. More importantly, by taking the offences to the Court, it enables the magistrate to consider the adverse impact the offence has caused and all relevant factors pertinent to each individual case to decide whether a person is guilty of the offence and, if so, the appropriate level of penalty. A fixed penalty system will not be able to differentiate the severity of committed offence nor will it allow other factors to be taken into account. Given the varied nature of these offences, it will be difficult to set a uniform rate of fines which will be regarded and accepted as fair by all affected.

10. For the foregoing reasons, we believe it is prudent to maintain the present system. We shall solicit the assistance of District Councils, Area Committees and managements of buildings to promote self-regulation amongst the shop owners. For ad hoc and minor breaches, warnings will be given in the first instance. However, enforcement and prosecution actions will continual to be taken against recalcitrant offenders.

ADVICE SOUGHT

11. Members are invited to comment on the content of this paper.

Food and Environmental Hygiene Department
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