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**Meeting of Panel on Food Safety and Environmental Hygiene
on 9 November 2004**

Background Brief prepared by Legislative Council Secretariat

Fixed Penalty System for Public Cleanliness Offences

Purpose

This paper summarised the discussion by Members on the fixed penalty system for public cleanliness offences.

Background

The Fixed Penalty (Public Cleanliness Offences) Ordinance

2. In 2001, the Fixed Penalty (Public Cleanliness Offences) Bill was introduced to enable a person who had committed certain public cleanliness offences to discharge his liability to conviction of the offences by payment of a fixed penalty. These public cleanliness offences included littering, spitting, and display of bills or posters in public places without permission. The fixed penalty for the offences was set at \$600 initially, and the level of penalty could be increased by the Legislative Council (LegCo) by resolution.
3. A Bills Committee was formed to study the Bill. In the course of deliberations, the Bills Committee expressed much concern about the operation of the scheme, since the Bills proposed that a total of six government departments (but not the Police), would enforce the relevant provisions within their own jurisdictions.
4. The issue of enhancing the deterrence against repeat offenders was also discussed by the Bills Committee. Some members suggested a higher level of fine for repeat offences of littering and spitting. The Administration had responded that a two-tier system would present serious administrative and operational problems which would defeat the purpose of having a simple and effective means to combat littering.

5. The Bill was passed by LegCo on 12 July 2001, incorporating the following amendments proposed by the Bills Committee –

- (a) in addition to the six departments, the Police was also empowered to issue fixed penalty notices for the scheduled public cleanliness offences in the Bill; and
- (b) the offence of dog fouling was included as one of the scheduled offences under the Bill.

The Ordinance came into operation on 27 May 2002, after consultation with the Panel on Food Safety and Environmental Hygiene in March 2002.

Implementation of the fixed penalty system

6. Prior to the implementation of the fixed penalty system, the Panel held a meeting on 18 March 2002 to discuss with the Administration its preparatory work and implementation plan. The LegCo Secretariat had prepared a background paper on “Preparation for the fixed penalty system for minor cleanliness offences” (LC Paper No. CB(2)1326/01-02(04)) to facilitate members’ discussion at the meeting.

7. At the Panel meeting in March 2002, members reminded the Administration to provide adequate training to enforcement staff and apply consistent standards in enforcement as different departments were involved in the implementation of the system. The Panel also urged the Administration to provide support for the enforcement in those public housing estates where management had been contracted out to private management companies. The Administration undertook to evaluate the effectiveness of the fixed penalty system and report to the Panel in six months.

8. The Panel reviewed the implementation of the fixed penalty system at its meetings on 15 July 2002 and 27 May 2003. Members noted that the majority of fixed penalty notices were issued by FEHD, and that enforcement staff of FEHD and AFCD experienced confrontation or even assault in some cases. Members considered that more support and training should be provided to enforcement staff, and there should be more public education and publicity to promote cleanliness of the environment. Panel members also expressed the following concerns –

- (a) in addition to FEHD, other enforcement departments (such as the Police, Leisure and Cultural Services Department and Agriculture, Fisheries and Conservation Department (AFCD)), should step up enforcement at hygiene blackspots;

- (b) more manpower and support should be provided to facilitate enforcement in public housing estates and government venues which had been contracted out for management; and
- (c) the amounts of fines imposed by court on some spitting offenders were lower than the level of fixed penalty, and this would defeat the purpose of taking offenders to court.

Team Clean's recommendations

9. The outbreak of the Severe Acute Respiratory Syndrome in Hong Kong has highlighted the importance of personal and community hygiene. As spitting and littering posed threat to public health, Team Clean proposed in its interim report published on 28 May 2003 that there should be stringent enforcement of such offences. In its report, Team Clean also proposed, among other things, that the fixed penalty for spitting and littering should be increased from \$600 to \$1,500.

10. Team Clean's interim report on measures to improve environmental hygiene in Hong Kong was discussed at the Panel meeting on 2 June 2003, and also at a special meeting of the House Committee on 6 June 2003. Members generally supported the "zero tolerance" approach to tackle the environmental hygiene problems and the proposed increase of fixed penalty from \$600 to \$1,500 for spitting and littering offences. Some other Members considered that the fixed penalty for dog fouling should also be increased to \$1,500. One Member suggested imposing community service orders, in addition to fixed penalty, for public cleanliness offenders. Some Members, nevertheless, expressed reservations about the proposal as it would increase difficulties in enforcement.

11. The Secretary for Health, Welfare and Food subsequently moved a resolution at the Council meeting on 18 June 2003 to increase the level of fixed penalty from \$600 to \$1,500 for the four scheduled public cleanliness offences under the Fixed Penalty (Public Cleanliness Offences) Ordinance. These offences included spitting, littering, display of bills or posters without permission and fouling of street by dog faeces. The resolution was passed at the Council meeting on 18 June 2003 and came into operation on 26 June 2003.

12. Team Clean further proposed in its final report published on 9 August 2003 that for repeat cleanliness offenders, more stringent measures, such as imposing higher fines and community service orders, would be necessary. At the Panel meetings on 15 August and 26 September 2003, members generally supported Team Clean's proposal of imposing stringent penalties for cleanliness offences. Some members suggested that –

- (a) the nature of community service to be performed by the repeat offender should be related to promoting cleanliness; and
- (b) the penalties for cleanliness offences should be proportionate to the gravity of the offences.

Proposed new penalties for repeat cleanliness offenders

13. At the Panel meeting on 28 October 2003, the Administration informed members that a public consultation exercise would be conducted to gauge public views on the proposed new penalties for repeat cleanliness offenders. The Administration advised that, since the introduction of the fixed penalty system in June 2002, out of a total of about 26 100 offenders, 382 were repeat offenders, 326 of them were second-time offenders while 56 had committed cleanliness offences three times or more. The Administration proposed to impose community service orders on second-time offenders if the second offence was committed within a period of 24 months from the date of the first offence.

14. At the meeting in October 2003, Panel members generally had no objection to the proposed imposition of community service orders on repeat cleanliness offenders, especially when the fine system had proven to have little effect on those habitual offenders. Some members, however, expressed concern that the Administration might impose even harsher punishment should the community service orders subsequently prove to be not effective. As regards the problem of unauthorised display of bills or posters, some members considered that a heavier penalty should be imposed. Alternatively, the administrative cost for removing the bills or posters should be recovered from the beneficiaries.

15. On 3 March 2004, the Administration informed the Panel of the outcome of the public consultation on the proposed new penalties for repeat cleanliness offenders. The findings revealed that the majority public expressed support for the proposal of imposing a community service order and a penalty higher than \$1,500 for repeat cleanliness offences committed within 24 months. The Administration informed the Panel that it would draw up detailed legislative proposals with a view to introducing it to LegCo in the 2004-05 session.

16. Panel members supported the Administration's proposal in principle, but some members did not agree that a uniform penalty should be applied to all repeat offenders regardless of the type of cleanliness offences involved. One non-Panel Member questioned the need for further reviewing or amending the legislation within such a short time, as the fixed penalty system had been put in place for only one year. Another member considered it inappropriate to include unauthorised posting of bills and posters in the proposed new penalty

system, as this would affect the offenders' livelihood. One member considered that a community service order should be awarded to those who had committed the offence more than twice. Some other members pointed out that the cleanliness offences should not be made a criminal offence solely for the purpose of imposing a community service order.

17. The Administration undertook to consult the Panel again before introducing the legislative proposal.

Questions raised by Members at Council meetings on related issues

18. In the 2002-03 and 2003-04 sessions, questions were raised by Members on issues concerning the implementation of the fixed penalty system and the level of penalty. A list of these questions is given in the Appendix.

Relevant papers

19. A list of relevant papers and documents is in the Appendix for members' easy reference. The papers and documents are available on the Council's website at <http://www.legco.gov.hk/english/index.htm>.

Appendix

Relevant Papers/Documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Motion Passed/Council Question</u>
Legislative Council	18 June 2003	Proposed resolution under the Fixed Penalty (Public Cleanliness Offences) Ordinance moved by the Secretary for Health, Welfare and Food
	3 July 2002	Oral question on "Implementation of Fixed Penalty (Public Cleanliness Offences) Ordinance" raised by Hon Emily LAU Wai-hing
	12 February 2003	Written question on "Implementation of the Fixed Penalty (Public Cleanliness Offences) Ordinance" raised by Hon YEUNG Yiu-chung
	26 February 2003	Written question on "Implementation of Fixed Penalty (Public Cleanliness Offences) Ordinance" raised by Hon Frederick FUNG Kin-kee
	7 May 2003	Oral question on "Enforcement of legislation against spitting" raised by Hon Frederick FUNG Kin-kee
	9 June 2004	Written question on "Increased fixed penalty for spitting and littering offences" raised by Hon LAU Kong-wah
Bills Committee on Fixed Penalty (Public Cleanliness Offences) Bill	22 June 2001	Report of the House Committee on 22 June 2001 LC Paper No. CB(2) 1877/00-01

House Committee	6 June 2003	<p>Discussion paper provided by Team Clean to the special meeting of the Panel on Food Safety and Environmental Hygiene on 2 June 2003 LC Paper No. CB(2) 2296/02-03(01)</p> <p>Background brief prepared by Legislative Council Secretariat on the work of Team Clean LC Paper No. CB(2) 2277/02-03</p> <p>Minutes of meeting LC Paper No. CB(2) 2683/02-03</p>
	2 July 2004	<p>Paper provided by the Administration on "Progress of measures to improve environmental hygiene in Hong Kong" LC Paper No. CB(2) 2979/03-04(01)</p> <p>LegCo Brief on "Report on Measures to Improve Environmental Hygiene in Hong Kong" issued by Team Clean on 9 August 2003 LC Paper No. CB(2) 2979/03-04(02)</p> <p>Minutes of meeting LC Paper No. CB(2) 3204/03-04</p>
Panel on Food Safety and Environmental Hygiene	18 March 2002	<p>Background paper prepared by the Legislative Council Secretariat LC Paper No. CB(2)1326/01-02(04)</p> <p>Administration's paper - LC Paper No. CB(2) 1326/01-02(05)</p> <p>Minutes of meeting LC Paper No. CB(2) 1614/01-02</p>
	15 July 2002	<p>Administration's paper - LC Paper No. CB(2) 2532/01-02(04)</p> <p>Minutes of meeting LC Paper No. CB(2) 2863/01-02</p>

	27 May 2003	Administration's paper - LC Paper No. CB(2) 2170/02-03(04) Minutes of meeting LC Paper No. CB(2) 3007/02-03
	2 June 2003	Interim Report on Measures to Improve Environmental Hygiene in Hong Kong The Chief Secretary for Administration's statement on the Interim Report on Measures to Improve Environmental Hygiene in Hong Kong at the Council Meeting on 28 May 2003 (Chinese version only) Administration's paper - LC Paper No. CB(2) 2274/02-03(01) Administration's paper - LC Paper No. CB(2) 2296/02-03(01) Administration's reply to questions raised by the Panel Chairman CB(2) 2301/02-03(01) (Chinese version only) Minutes of meeting LC Paper No. CB(2) 3041/02-03
	15 August 2003	Team Clean's further report on measures to improve environmental hygiene in Hong Kong Minutes of meeting LC Paper No. CB(2) 157/03-04
	26 September 2003	Minutes of meeting LC Paper No. CB(2) 242/03-04
	28 October 2003	Administration's paper – LC Paper No. CB(2) 154/03-04(05) Minutes of meeting LC Paper No. CB(2) 553/03-04

	3 March 2004	Administration's paper – LC Paper No. LC Paper No. CB(2) 1382/03-04(04) Minutes of meeting LC Paper No. CB(2) 2069/03-04
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