

**For discussion
on 9 December 2008**

LegCo Panel on Food Safety and Environmental Hygiene

**Enforcement against
Unauthorised Display of Bills and Posters in Public Places**

Purpose

This paper briefs Members on the enforcement against unauthorised display of bills and posters in public places by the Food and Environmental Hygiene Department (FEHD).

Background

2. Commercial entities sometimes display bills and posters in various sizes, shapes and forms in public places for on-street advertising. Non-profit making organisations, government departments, community personalities (such as Legislative Councillors or District Councillors) and other members of the public may also do so to promote their services or events. In addition to posting on walls / lamp posts / street structures and mounting on railings, supporting instruments such as easy-mount frames or placards may also be used for the display.

3. Indiscriminate display of bills and posters on the streets affects streetscape and public cleanliness, causes inconvenience to pedestrians and draws public complaints. Display on any Government land without written permission of the authority (“unauthorised display”) also constitutes an offence under section 104A of the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO). Upon conviction, the maximum penalty will be a fine of \$10,000 and \$300 a day for continuous offence.

4. To enable community personalities, non-profit making organisations and government departments to lawfully display bills or posters to promote their causes without compromising traffic safety and streetscape, the Lands Department (Lands D) assigns roadside spots in various districts under the Management Scheme for the Display of Roadside Non-commercial Publicity Materials, so that interested parties may apply to use them. Approval under the

Scheme is regarded as a written permission for the purpose of section 104A of PHMSO.

Existing Enforcement and Prosecution Approach

5. FEHD is the enforcement authority for section 104A of PHMSO. Until recently, in enforcing the law, a distinction is drawn between commercial and non-commercial bills and posters displayed without permission, as elaborated in paragraphs 6 and 7 below.

6. The Department adopts a stringent approach towards contraventions involving display of bills and posters that promote commercial interests. They will be removed whenever found, with costs recovered from the relevant parties and prosecution of the offenders, if identified.

7. A relatively tolerant approach has been adopted towards unauthorised non-commercial bills and posters, which are typically displayed to promote activities organised or services provided by non-profit making organisations or community leaders. Although there are routine operations to remove such displays and recover costs from the relevant parties, prosecution is not taken out.

Changing Circumstances

8. In recent years, commercial entities often use easy-mount frames to display bills and posters, without permission, for on-street promotion of their products and services. Such unauthorised commercial displays are particularly rampant in busy districts with a high pedestrian flow. They have attracted extensive public complaints of street obstruction and unsightliness.

9. Section 104E of PHMSO provides that a bill or poster does not include any structure, apparatus or hoarding used for the display. In view of this provision, until October 2008, enforcement action was not taken against easy-mount frames used for unauthorised commercial displays in public places, because they were the apparatus used for such displays but not themselves bills and posters.

10. Over time, there has also been a growing tendency for some groups / individuals to occupy certain locations persistently for unauthorised display of non-commercial bills and posters to promote their ideas or views. Taking advantage of the relatively more tolerant prosecution approach towards unauthorised non-commercial displays, such contraventions have sometimes become rampant and abusive.

New Enforcement and Prosecution Approach

11. To prevent further deterioration of the ground situation and uphold the law on a fair and consistent basis, FEHD has reviewed and refined its enforcement and prosecution approach in relation to the unauthorised display of bills and posters in public places. The new approach is set out in detail in paragraphs 12 to 15 below.

12. All easy-mount frames, placards and similar paraphernalia used for the unauthorised display of bills and posters in public places will be removed, together with the bills and posters themselves, as evidence of contravention of section 104A of PHMSO. Removal actions will be taken irrespective of whether the bills and posters concerned are of a commercial and non-commercial nature.

13. In addition to the person who contravenes section 104A(1), according to section 104D, anyone who uses another person to display or affix a bill or poster without permission, and any person whose goods, trade, business or other concerns are given publicity by the bill or poster, shall be guilty of that offence in the same manner and to the same extent as if he/she had personally committed it. Section 104D also provides for the defence of the offence taking place without a person's knowledge or consent.

14. In terms of prosecution –

- (a) in relation to the unauthorised display of a commercial bill or poster, an offender as set out in paragraph 13 above, if identified, will be prosecuted.
- (b) in relation to the unauthorised display of a non-commercial bill or poster, an offender will receive a warning on first contravention. Any subsequent contravention may lead to prosecution.

15. In implementing this new approach, priority will be accorded to the most obvious and abusive offences, having regard to factors including the frequency of contraventions; scale, timing and duration of display; area occupied; and relevant complaints received.

Trial Scheme

16. The new enforcement and prosecution approach set out in paragraphs 12 to 14 above have been rolled out on a trial basis in respect of unauthorised commercial displays in Wan Chai (WC) District since early October 2008, and

extended to Yau Tsim Mong (YTM) District since end October. Under the trial scheme, FEHD seizes easy-mount frames and similar paraphernalia used for unauthorised display of commercial bills and posters in public places as evidence of the offence, and prosecutes persons displaying such bills and posters without permission as well as persons whose goods, trade, business or other concerns are given publicity by such displays (if identified).

17. Prior to implementation of the trial scheme, FEHD consulted the WC District Council on 15 July and YTM District Council on 25 September, and secured their support. Letters were issued to companies found to have used easy-mount frames and similar paraphernalia for on-street promotion to warn them of the possible consequences of display of bills and posters in public places without permission. Before enforcement operations were conducted, publicity materials disseminating the same message were also distributed to on-street promoters in WC from mid-September to early October and YTM from early to late October.

18. The ground situation has improved noticeably following the trial, with positive feedback from the relevant District Councils and the public.

Way Forward

19. In view of the success of the trial scheme, FEHD plans to extend the new enforcement and prosecution approach to the whole territory. Drawing on the experience of the trial scheme, publicity helps enhance public awareness and canvass community cooperation. To allow time for this, the new approach will be implemented on a territory-wide basis with effect from 2 February 2009.

Advice Sought

20. Members are invited to note the new enforcement and prosecution approach and full implementation date.

**Food and Health Bureau
Food and Environmental Hygiene Department
December 2008**