



Panel on Home Affairs on 7 June 2014,
T Yeung to: panel_ha

23/05/2014 23:40

From: T Yeung
To: panel_ha@legco.gov.hk

Administration's proposal to introduce a fixed penalty system as an enhanced measure to tackle shop front extensions

I would like to offer my view:

HAD is asking for public comment on fines.

I think we need to need to work out the principle.

#1

If any shop owners are found guilty of illegal shop extension, they shall pay to compensate for the (1) rent of the space occupied (2) social cost for the inconvenience or nuisance arising from such offence

#2

The government department shall restore the street to its original tidy condition (just like illegal parking: driver was given the ticket and they have to leave the spot right away.)

Implementation

Although HAD said their officers could reissue ticket if no improvement made, this is not implementable since no one could define what is improvement and this could be very subjective. If they illegally occupy 100 sq ft public space, then reduced to 90 sq ft, the shop owner could excuse that this is an improvement, but this is actually no. This could introduce risk of dispute and causing trouble to the operating staff.

Fines

If the rent value + nuisance cost = say 30,000 per month
and practically two tickets per month

Fine value per ticket = 15000

Every one knows that this is not a "temporary occupation of space". As such, the fines is not a punishment, but compensation. It shall reflect the costs.

Formula for the fines value

not less than = (rent per month + nuisance cost per month)/ number of tickets per month

Do not be naive to set fines value = 1500 per ticket. Any value below 10,000 is just a laugh. \$1500 is not enough to cover the staff cost for issuing ticket + processing ticket.

HAD and FEHD could work out from their statistics on the number of tickets issued to each offender shop PER MONTH.

HAD and FEHD shall seek view from private practising Quantity Survey or the rent of the occupied space per sq ft.

I would like to reiterate that (1) the goal is to restore the street to its original tidy condition (2) the proposal on fines would not address the issue and shall not discharge the Department's obligation from enforcement (3) enforcement should be strictly followed and no discretion since this violates the principle of law. HAD, FEHD are authorised to enforce, judgment and discretion should rest with the judge, but not with the District Board.

I would like to quote a few examples from which I am not convinced that why there is no improvement over years, but getting worse at the following locations in North Point:

1. Pharmacy Store at Kings Road 273
2. The fruit store on Tong Shui Road section (north bound) between Java Road and Chun Yeung Street
3. The fruit store on Tong Shui Road section (south bound) between King's Road and Marble Road
4. Pharmacy Store on King's Road section between Java Road and King's Road
5. Herbal Tea shop at the corner of Shu Kuk Street and King's Road
6. Fruit store at 308 Electric Road

Please let me know if HAD and FEHD are really enforcing or if their staff are performing. Also there are different enforcement standards between districts, e.g. North Point and Quarry Bay. This is very obvious.

There are pharmacy stores in North Point e.g. Kings Road section between Fuk Yuen Street and Oil Street. They are very disciplined. I would say HAD and FEHD should set this a standard, i.e. removing illegal shop extensions is mission possible..

FEHD and HAD keep saying that the consultation is in progress. Regardless, they shall restore the streets to its original tidily and orderly manner.

I have asked for joint inspection with senior managements of HAD and FEHD, but I am yet to hear from them/

If I take the logic of the proposal that the fines level and discretion on enforcement shall shall on Distruct Board, could District Board take the discretion to decide the salary level based on the performance of staff of FEHD, HAD and other relevant departments?.

Hope that HAD and FEHD shall not be too naïve to believe that \$1500 fine level would be effective.

Mr. Yeung