

**For discussion on
11 December 2015**

Legislative Council Panel on Home Affairs

Shop Front Extensions

PURPOSE

This paper seeks Members' support for the introduction of the fixed penalty system to tackle shop front extensions (SFE)¹ by amending the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap 570), and outlines the related enforcement strategy and support measures.

BACKGROUND

2. At the meeting of the Legislative Council (LegCo) Panel on Home Affairs (Panel) on 9 January 2015, the Government reported vide LC Paper No. CB(2)543/14-15(05) the views collected during the public consultation on "Enhanced Measures against SFE". Except for the industry stakeholders, most respondents including the District Councils (DCs) generally supported the introduction of a fixed penalty system as an additional legal tool to achieve greater deterrence effect. On the proposed level of fixed penalty, most of the respondents considered \$1,500 appropriate.

3. At the Panel meeting, Members expressed support for the introduction of the proposed fixed penalty system and setting the penalty level at \$1,500. Some Members commented that it was important to strike a balance between strengthening enforcement and giving regard to the livelihood of business and employees.

PROPOSAL

4. The Government has since followed up the recommendations

¹ SFE broadly refer to the occupation of public places by shops in front of or adjacent to their premises for the purpose of conducting or facilitating business activities. Such extensions are very often at the expense of road access, safety and environmental hygiene, and affect the quality of city life.

made in the consultation document, including preparation of the legislation for implementing the proposed fixed penalty system as well as mapping out the enhanced enforcement strategy and necessary support measures. Details are set out in paragraphs 5 to 21 below.

I. Introducing the Fixed Penalty System

5. Among the existing enforcement tools available², section 4A of Summary Offences Ordinance (Cap 228)³ is a more effective piece of legislation for tackling SFE. However, its deterrent effect is limited by the long lead time of prosecution (about one to two months through summonses) and the relatively light penalties handed down by the court (averaging \$661 per case in the first half of 2015).

6. To address the deficiency of the summons system, we propose to introduce a fixed penalty system by amending the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap 570) such that the offence of “obstruction of public places” under section 4A of Cap 228 can be prosecuted with fixed penalty notices (FPNs), on top of the current summons system. The proposed level of penalty is \$1,500.

7. Subject to Members’ support, we plan to introduce the Fixed Penalty (Public Cleanliness Offences) (Amendment) Bill (the Bill) to the LegCo in January 2016, aiming for passage within the 2015/16 legislative year. To allow sufficient time for the trade and other stakeholders to make necessary preparations for the implementation of the fixed penalty system and for extensive publicity to be made, it is intended that the Bill will commence six months following its passage.

II. Enforcement Strategy upon Introduction of the Proposed Fixed Penalty System

8. The fixed penalty system will be an additional legal tool to tackle SFE. Depending on the actual circumstances of the case, relevant enforcement departments will deploy the most appropriate legal tool or tools to enforce against various types of SFE. The tools that may be

² The existing enforcement tools are set out in paragraphs 12 - 16 in the paper.

³ Section 4A of Cap 228 states “Any person who without lawful authority or excuse sets out or leaves, or causes to be set out or left, any matter or thing which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, any person or vehicle in a public place shall be liable to a fine of \$5000 or to imprisonment for 3 months.”

deployed by enforcement departments upon enactment of the Bill are set out in the ensuing paragraphs.

(a) “Obstruction of Public Places”

9. As a general principle, the circumstances of SFE offences chargeable with FPN must be **straightforward, clear-cut and capable of being easily established** (i.e. without dispute over facts or whether the subject act falls foul of the law).

10. As FPN is proposed to be issued to offenders of section 4A of Cap 228, the SFE offence that triggers the issue of FPN should meet the threshold of “obstruction of public places” as set out in section 4A of Cap 228, i.e. setting out or leaving, or causing to be set out or left, any matter or thing which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, any person or vehicle in a public place. In this regard, enforcement officers will consider the circumstances on the ground before issuing FPN, including the width of the pavement, pedestrian flow at the time, and whether the shop operators can adduce lawful authority or excuse, etc.. For instance, enforcement officers may consider serving FPN in the following circumstances:

- (a) a person who has committed the offending act as witnessed by law enforcement officers (i.e. caught “red-handed”), or the person-in-charge of the shop who is believed to have committed the offending act given sufficient circumstantial evidence (e.g. stacks of goods have been placed in front of the shop for a certain period of time; goods appeared to be of similar nature to those on sale inside the shop; or price tags and shop labels were stuck on those goods); and
- (b) where there is sufficient evidence (albeit circumstantial) of a SFE offence, a FPN will be served on the person-in-charge of the shop who is found present at the scene. Where applicable, the person-in-charge may be the owner, licensee or manager of the shop, or anyone who has or admitted to have managerial control over the shop.

11. As with the current summons system, the Food and Environmental Hygiene Department (FEHD) and the Hong Kong Police Force (HKPF) will be the enforcement departments of the fixed penalty system against “obstruction of public places”. Specifically, FEHD will issue FPNs as part of their routine enforcement duties, while HKPF will take part in joint operations to offer necessary assistance to other departments and issue FPNs, if necessary, in pre-planned inter-departmental operations.

12. Where the case is less straightforward and/or more serious or complicated (e.g. involving repeated offenders), consideration will be given to issuing **summons** and/or taking **arrest** action under section 4A of Cap 228. With the penalty level of FPN set at \$1,500, the Department of Justice and the relevant enforcement departments will, where appropriate, consider applying to the court for handing down heavier penalties under the summons system for more serious offences.

(b) “Illegal Hawking”

13. Experience indicates that a considerable number of SFE cases involve “illegal hawking” offences. For these cases, FEHD may take enforcement actions such as **arrest** and **seizure** under sections 83B⁴, 84⁵ and 86⁶ of the Public Health and Municipal Services Ordinance (Cap 132) in addition to **summons** action against illegal hawking.

(c) Conduct of Food Business at Shop Front

14. For SFE relating to food premises, FEHD may prosecute the licensees of food premises for conducting food business beyond the confines of their premises under section 34C of the Food Business

⁴ Section 83B(1) of Cap 132 states “No person shall hawk in any street except in accordance with a licence issued under regulations made under section 83A.”

⁵ Section 84(1) of Cap 132 states “Any public officer authorized in writing in that behalf by the Authority may arrest without warrant any person whom he may reasonably suspect of being guilty of any scheduled offence.”

⁶ Section 86(1) of Cap 132 states “A public officer authorized in writing by the Authority for the purposes of this section or a police officer may seize any equipment or commodity in respect of which he has reason to believe that a hawker offence has been committed, and may cause such equipment or commodity to be removed to and kept at the risk of its owner at a Government depot or police station, or any other place approved by the Authority, pending its disposal under this Part.”

Regulation (Cap 132X)⁷. For repeated offenders, the licence may be suspended or cancelled by FEHD under a **Demerit Points System** upon conviction of the offences.

(d) Erection of Unauthorized Platforms and Unauthorized Building Works

15. SFE, including those of a much larger scale, or which involve pavements, buildings and fixed/mobile structures, will continue to be dealt with by the relevant government departments under other existing legislation.

16. For non-compliance with notices issued against unauthorized platforms on Government land at shop front, the Lands Department may take enforcement actions by way of **summons** under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap 28)⁸. The Buildings Department may issue **summons** for non-compliance with removal orders issued against Unauthorized Building Works (UBW) attached to and supported by buildings under section 24 of the Buildings Ordinance (Cap 123)⁹.

(e) Inter-departmental Cooperation

17. Relevant departments will co-operate more closely and mount joint operations among themselves more frequently. For obstruction cases which cannot be dealt with by any single department using their respective statutory powers¹⁰, or where SFE cause serious nuisance to the

⁷ Section 34C of Cap 132X states “No licensee shall, save with the permission in writing of the Director, carry on or cause, permit or suffer to be carried on a food business at or from any place beyond the confines of the food premises as delineated on the plan approved under section 32 in respect of his licence.”

⁸ Section 6(4) of Cap 28 states “Any person occupying unleased land, otherwise than under a licence or a deed or memorandum of appropriation, who without reasonable excuse does not cease to occupy the same as required by a notice under subsection (1) shall be guilty of an offence.”

⁹ Section 24(1) of Cap 123 states “Where any building has been erected, or where any building works or street works have been or are being carried out in contravention of any of the provisions of this Ordinance the Building Authority may by order in writing require —

- (a) the demolition of the building, building works, or street works; or
- (b) (Repealed 43 of 1993 s. 6)
- (c) such alteration of the building, building works or street works as may be necessary to cause the same to comply with the provisions of this Ordinance, or otherwise to put an end to the contraventions thereof, and in every case specify the time within which the demolition, alteration or work required by such order shall be commenced and the time within which the same shall be completed.”

¹⁰ Such cases generally refer to those where no “illegal hawking” is involved, for instance, recycling

community that cannot be tackled by a single department, the District Officer (DO) concerned will coordinate inter-departmental enforcement operations under the District Management Committee (DMC) mechanism where necessary. Where necessary, HKPF will render assistance to other departments in joint operations¹¹.

III. Other Support Measures

(a) Training and Enforcement Guidelines

18. To prepare for the introduction of the proposed fixed penalty system, the two enforcement departments, namely, FEHD and HKPF, will provide training and enforcement guidelines for their frontline staff to assist them in determining on the spot the most appropriate legal tools (including FPN) to be used, taking into consideration the actual ground situation.

(b) Community Involvement

19. Enforcement departments will continue to actively engage the community, including DC members, in drawing up “black spots” (e.g. SFE that pose imminent danger to the pedestrians and traffic) for priority enforcement actions. It remains enforcement departments’ responsibilities to draw up enforcement plans and priorities, taking DCs’ views into account in the process.

20. As suggested by Members at the Panel meeting, we have uploaded information on the lists of SFE “black spots” and “tolerated areas”¹² onto the website (http://www.had.gov.hk/en/public_services/information_on_shop_front_extensions/index.htm). The lists of “black spots” and “tolerated areas” will be regularly reviewed in consultation with DCs.

shops placing recyclable wastes at shop front, metal and engineering workshops occupying the shop front area, car washing activities at shop front, temporary storage of construction materials at roadside, etc..

¹¹ In general, police will only take actions on street management issues when there is:

- (a) an occurrence of crime or breach of the peace;
- (b) an imminent danger posed to the public; and
- (c) serious disruption to traffic and/or other road-users.

¹² As at September 2015, 8 areas in 5 districts have been designated as “tolerated areas” in consultation with DCs. These are areas which constitute distinct characteristics and contribute to the vibrancy of the district.

(c) Public Education and Publicity

21. The Government will launch a new round of publicity campaign, including a new Announcement in the Public Interests (API), on the proposed fixed penalty system. DOs will seek support from DCs and provide assistance in launching public education and publicity at the district level (e.g. distributing leaflets/ pamphlets/ advisory letters etc.).

ADVICE SOUGHT

22. Members are invited to support the introduction of the Bill into LegCo tentatively in January 2016, and note the enforcement strategy and support measures to tackle SFE as set out in paragraphs 5 to 21 above.

**Home Affairs Bureau
Home Affairs Department
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