

民政事務總署  
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Clerk to Panel on Home Affairs  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(Attn.: Ms Alice Leung)

By Fax : 2509 9055

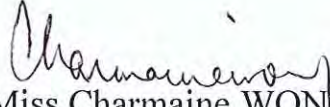
Dear Ms Leung,

**Panel on Home Affairs  
Follow-up to Meeting on 22 December 2015**

**Shop Front Extensions**

At the meeting of the Panel on Home Affairs held on 22 December 2015, the Administration was requested to provide the enforcement guidelines in relation to the proposed fixed penalty system. A copy of the enforcement guidelines prepared by the Food and Environmental Hygiene Department is at Annex for reference. The guidelines may be subject to refinement in the light of staff consultation.

Yours sincerely,

  
(Miss Charmaine WONG)  
for Director of Home Affairs

c.c. Secretary for Home Affairs

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**Departmental Guidelines on Issue of Fixed Penalty Notice (FPN)  
against Obstruction Caused by Shop Front Extension<sup>1</sup> (SFE)**

**(I) ENFORCEMENT**

General points to note –

1. Section 4A of the Summary Offences Ordinance (Cap 228) states that “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 \$5,000 or to imprisonment for 3 months.”.
2. FPN serves as an additional legal tool aside from summons for tackling the offence of “obstruction of public places” under section 4A of Cap 228.
3. The SFE offence that triggers the issue of FPN, similar to other legal tools, 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.
4. As at present, mere placing of articles or things at shop front may not constitute an offence if such an act does not or may not obstruct or cause inconvenience to any person in a public place. The enforcement officers should, as usual, 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.
5. Generally speaking, if obstruction is not so serious as to warrant immediate legal action, a warning for an offence under section 4A of Cap 228 may be given to the responsible person advising him to remove the commodities/articles causing obstruction within a reasonable time, otherwise

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<sup>1</sup> 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.

legal action may be taken against him. The action officer should record the details of the warning given in his notebook. The action officer should return after the specified time to follow up the case. It is not necessary to serve warning again before taking enforcement action in case of recurrence of the irregularity. If the responsible person is reluctant to remove the commodities/articles, or the obstruction caused by the commodities/articles still exists after the time given has expired, or the obstruction is so serious that immediate action is required, the action officers should take out appropriate legal actions basing on the evidence collected. For repeat offenders, the action officer should take immediate enforcement actions without issuing further prior warning each and every time.

6. In any event, enforcement officers should have the right to exercise discretion to determine the legal tools to be used on the spot taking into consideration the actual ground situation.
7. To avoid confusion to the public, officers should only take enforcement action whilst on duty. This must be strictly observed. Offence witnessed off-duty can be reported to duty staff for action. Uniformed staff should wear proper uniform and carry the Departmental Warrant Card, the book of FPN and the official notebook.
8. The enforcement officer should be vigilant, patient and courteous in the execution of duty.

**Steps to follow on witnessing the commission of scheduled obstruction offence of the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance**

9. The fixed penalty system targets at the person who commits the offending act as witnessed by law enforcers (i.e. caught “red-handed” or is believed to have committed the offending act based on sufficient circumstantial evidence), or the person-in-charge of the shop who is believed to have committed the offending act given sufficient circumstantial evidence. The circumstances of the obstruction offences chargeable with FPN must be straightforward, clear-cut and capable of being easily established, i.e. without dispute over facts or over whether the subject act indeed falls foul of the law. Examples of straightforward obstruction cases are:
  - (a) a person is seen physically placing articles or things in the public place in front or at side of the shop (an example is given at Appendix I); and

- (b) though nobody is seen setting the articles or things in the public place, sufficient circumstantial evidence (e.g. stacks of goods have been placed in front of the shop for a certain period of time; goods appear to be of similar nature to those on sale inside the shop; or price tags and shop labels are stuck on those goods) is available and a person who is present inside the shop appears to be in charge of the shop business, with or without self-admission (an example is given at Appendix II).
10. Approach the offender, stop him and reveal your identity. For non-uniformed staff, you should inform the offender that you are on duty and produce your Departmental Warrant Card for identification. If he questions your identity, you can give him the telephone number of your supervisor for verification.
  11. Point out to the offender the offence he has just committed and inform him that he will be issued with a fixed penalty notice.
  12. Ask the offender for his personal particulars, including name, address, contact telephone number (if any) and the proof of identity. Inform him of the purpose for collecting his personal data and remind him that it is an offence to knowingly give false or misleading information to a public officer in the enforcement of this law. Carefully inspect his proof of identity and record his personal particulars in your notebook. Extra care should be taken in recording the offender's address and telephone number, if the offender is an elderly person or a person with an accent, to avoid wrong entry due to low audibility or misunderstanding. The accuracy of the offender's address is of utmost importance for follow-up action to be taken effectively. To ensure the accuracy of the address given by the offender, the following steps should be taken –
    - (a) after taking down the address of the offender, the enforcement officer should request the offender to repeat the address for verification purpose;
    - (b) where appropriate, use the telephone number provided by the offender to verify on the spot the validity of the given information; and
    - (c) the enforcement officer should show the address written down in the fixed penalty notice to the offender for verification, and invite him to sign and confirm.

If an offender without reasonable excuse fails to comply with the requirement to give his name, address and contact telephone number (if any) and/or produce his proof of identity, the enforcement officer may arrest him and take him to the nearest police station or deliver him into the custody of a police officer.

13. The offender should be asked whether he wishes to give explanation of the alleged offence committed. Inform him that if he does, what he says will be taken down and may be used as evidence in Court. He has a right to remain silent if he prefers not to say anything about the offence.
14. The enforcement officer should fill in the FPN (Form 1) and serve the original copy of it to the offender on the spot, on satisfying that the particulars have been correctly and legibly entered. The enforcement officer should explain to him the details of the suspected offence, the time allowed for settlement of the penalty and inform him that he may have the right to notify the Authority that he wishes to dispute liability for the offence specified in the FPN.
15. The enforcement officer should properly record in the notebook all particulars of the case, including: details of the suspected offence, any remarks put forward by the offender, the action taken and the justifications for taking your course of action, photos, etc.
16. The enforcement officer should be patient and tactful in special situations such as dealing with elderly offenders.
17. For more serious and complicated SFE cases<sup>2</sup>, consideration will be given to issuing summons or taking arrest and charge action under section 4A of Cap 228. Possible scenarios may include (a) SFE offenders could not be easily identified on the spot which requires more time to investigate; (b) SFE that involve buildings and fixed/mobile structures and commodities for which liability could not be easily identified for issuance of FPN; (c) serious and persistent occurrences of SFE caused by the same shop.

## **(II) CASE VETTING**

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<sup>2</sup> The fixed penalty system is 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.

18. An officer of at least one rank higher than the action officer should vet the issued FPN and any additional information supplementing the case.
19. If the offender wilfully gives wrong personal particulars, including address and telephone number, the Authority may consider taking summons against him. The case should be vetted and endorsed by a senior officer preferably at directorate level before initiating legal proceeding.

### **(III) NON-PAYMENT CASE OF FIXED PENALTY NOTICE**

20. The computer system will screen the payment records of the issued FPNs and will automatically generate the demand note (D/N) (Form 2) for unsettled cases. The Authority will issue D/N, requiring the offender to pay the penalty within 10 days or to notify Authority of his intent to dispute.

### **(IV) NON-COMPLIANCE OF DEMAND NOTE**

21. If the offender does not pay the fixed penalty within the date specified in the D/N, the Authority shall follow up the case and apply to the court for an order.
22. If the offender fails to pay the penalty within 14 days from the date of the court order, the offender shall, for the purposes of section 68 of the Magistrates Ordinance (Cap 227), be deemed to have failed to pay the sum adjudged to be paid by a conviction and shall be liable to be imprisoned under that section.
23. If the offender has paid the full amount of the fixed penalty and additional penalty shown in the order, he shall not be liable to be prosecuted or convicted for the offence to which the order relates.
24. Alternatively, if the offender fails to pay the penalty within one month from the date of the court order, the Authority shall apply to the court for an order to recover the penalty by distress and sale of any goods and chattels of the person.

### **(V) DISPUTE LIABILITY**

25. If the offender wishes to dispute liability, the Authority shall follow the usual procedure to apply to court for the issue of summons.

**Food and Environmental Hygiene Department**



## Appendix I

A person is seen physically setting out articles or things in the public place in front or at side of the shop causing obstruction. Evidence of illegal hawking is not readily available.

### **Action to be taken:**

This scenario is a straightforward, clear-cut and capable of easily established case as the offender is caught red-handed. After investigation and based on circumstantial evidences, the action officers should assess the seriousness of the obstruction. If the problem warrants enforcement action, a FPN can be issued to the person who was seen placing articles or things in the public place in front or at side of the shop.

The action officer should ask the offender if he can make any claim of “lawful authority or excuse” after administering the caution to him. His reply or silence should be recorded onto the notebook. If the excuse given is unreasonable, the officer will issue the FPN to the offender.

## Appendix II

Articles are placed in the public place in front or at side of the shop. Evidence of illegal hawking is not readily available. Nobody is seen setting out the articles or things in the public place.

### **Action to be taken:**

After investigation and based on circumstantial evidences, the action officer should assess the seriousness of the obstruction. If the problem warrants enforcement action, though nobody is seen setting out the articles or things in the public place, sufficient circumstantial evidence (e.g. stacks of goods have been placed in front of the shop for a certain period of time; goods appear to be of similar nature to those on sale inside the shop; or price tags and shop labels are stuck on those goods) is available and a person who is present inside the shop appears to be in charge of the shop business, e.g. giving instruction to other “foki”, whether with or without self-admission; a FPN can be issued to this person.

The action officer should ask the offender if he can make any claim of “lawful authority or excuse” after administering the caution to him. His reply or silence should be recorded onto the notebook. If the excuse given is unreasonable, the officer will issue the FPN to the offender.