

**For discussion
on 8 January 2001**

LegCo Panel on Food Safety and Environmental Hygiene

Proposed fixed penalty system for minor public cleansing offences

PURPOSE

This paper seeks Members' views on a proposed fixed penalty system for minor public cleansing offences.

BACKGROUND

2. In December 1998, the Steering Committee on Healthy Living endorsed a proposal recommended by the former Director of Regional Services to introduce a fixed penalty system for minor littering offences. Members of the former Joint Provisional Urban Council / Provisional Regional Council Keep Hong Kong Clean Steering Committee subsequently considered the proposal and suggested that a two-tier fixed penalty system, i.e. \$600 for first-time offenders and \$1,000 for repeated offenders, should be introduced. Members also recommended that the fixed penalty system should be applicable to eight types of minor public cleansing offences. These are:

- a) Throwing / depositing litter in public places;
- b) Beating / cleaning carpet in public places;
- c) Depositing in a litter container anything capable of causing ignition;
- d) Spitting in public places;
- e) Raking and picking over waste deposited;
- f) Dog fouling;
- g) Permitting waste containers to remain in a public place exceeding 10 minutes; and
- h) Dumping refuse into the sea.

3. We have reviewed the proposed fixed penalty system and come to the view that to reinforce our effort to clean up the city, the proposed system should be introduced. It will also demonstrate Government's determination in tackling the littering problem. In addition, it will relieve the courts of handling these minor offences.

PROPOSAL

4. We propose that the fixed penalty system should include the following main provisions:

Types of offences

5. It will cover the following offences :

- a) Throwing litter in public places and into the sea ;
- b) Spitting in public places; and
- c) Unauthorized display of bills or posters.

6. These three offences are recommended because they are the most frequently committed by the public. In 1999, the numbers of convictions for littering, spitting and unauthorized display of bills or posters were 15,810, 4,690 and 465 respectively. Although the number of convictions for unauthorized display of bills or posters is comparatively small, the problem is becoming more serious and is a constant source of complaint.

7. We propose to exclude the other minor cleansing offences previously recommended by the former Provisional Municipal Councils (PMCs) in order to focus on offences which pose fewer enforcement problems. Other offences will continue to be prosecuted under the Public Health and Municipal Services Ordinance (Cap. 132) and the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg.). We will review the list of offences covered at an appropriate time.

Fixed penalty level

8. We are of the view that the penalty should be set at a level sufficient to achieve the desired deterrent without arousing too much public objection. We support the former PMCs' proposal of fixing the level at \$600. It is slightly higher than the fines of some common traffic contraventions (\$320 and \$450) and the average fine imposed by the court for littering (\$468) and spitting (\$570). We also propose that Legislative Council may amend the fine level by resolution, as in the case of fines for traffic contraventions.

9. We do not favour a two-tier penalty system as proposed by the former PMCs because this will present serious administrative and operational problems, such as the keeping and checking of conviction records for the purpose of issuing notification letters to repeated offenders for additional fines. Not only will it increase the cost of implementing the system, it will also defeat the purpose of having a simple and effective means to combat littering.

Inspection of proof of identity

10. Enforcement officers have encountered difficulties in establishing the true identities and addresses of alleged offenders. This has resulted in abortive summons or nugatory efforts in tracing the offenders. To ensure effective enforcement, we propose that an enforcement officer who has reasonable cause to believe that a person has committed any of the three offences should be given the power to inspect the Hong Kong Identity Card or other proof of identity for the purpose of ascertaining the true identity of the person. The alleged offender will commit an offence if he fails to comply, without reasonable excuse, with such a request.

Enforcement departments

11. At present, certain grades of public officers in the Food and Environmental Hygiene Department (FEHD), Agriculture, Fisheries and Conservation Department (AFCD), Marine Department (MD), Housing

Department (HD) and Leisure and Cultural Services Department (LCSD), are empowered under section 8A of the Magistrates Ordinance (Cap. 227) to prosecute public cleansing offenders. We propose that these public officers should be authorized to issue fixed penalty notices. We also propose that officers of Environmental Protection Department (EPD), which is currently not empowered to prosecute public cleansing offenders under the Magistrates Ordinance, be authorized to issue fixed penalty notices as the department also takes out prosecutions against environmental nuisances and pollution from time to time.

STAFF SUPPORT

12. The effectiveness of the proposed fixed penalty system will, to a large extent, depend on the enforcement capability of the enforcement officers. FEHD, as the main department responsible for enforcing the proposed fixed penalty system, will prepare a comprehensive training programme for the staff, covering gathering of evidence, handling of confrontations, operational procedures, giving evidence in court, conduct and discipline.

13. To ensure that all enforcement officers from departments concerned will adopt a consistent enforcement standard, FEHD will prepare an Operational Manual and invite other enforcement departments to nominate selected officers to join the training programme who will then serve as trainers for their departments.

CONSULTATION

14. We have consulted the Advisory Council on Food and Environmental Hygiene and the Steering Committee on Clean Hong Kong on 14 September 2000 and 10 November 2000 respectively. Members supported the proposal.

LEGISLATIVE TIMETABLE

15. Our plan is to introduce a bill on the fixed penalty system into the Legislative Council in the first quarter of 2001.

ADVICE SOUGHT

16. Members are requested to express their views on the proposed fixed penalty system.

Environment and Food Bureau
Food and Environmental Hygiene Department
January 2001