

**For discussion
on 13 December 2005**

LegCo Panel on Food Safety and Environmental Hygiene

Proposed New Penalties for Repeat Cleanliness Offenders

PURPOSE

This paper briefs Members on the revised proposals of the new penalties for repeat cleanliness offenders.

BACKGROUND

2. At the meeting of the LegCo Panel on Food Safety and Environmental Hygiene on 9 November 2004, we sought members' view on the proposals to stiffen the penalties for repeat cleanliness offenders –

- (a) A first-time offender of any of the four cleanliness offences (namely littering, spitting, dog-fouling and unauthorized posting of bills and posters) under the fixed penalty regime would continue to be issued a fixed penalty notice of \$1,500;
- (b) If the offender commits a second offence within a period of 24 months, the enforcement department will withdraw the fixed penalty notice issued to the offender and replace it with a summons and, at the Court hearing, apply to the Court for a penalty higher than \$1,500 and the award of a community service order (CSO). The level and form of penalties will be left to the discretion of the Court; and
- (c) The four cleanliness offences will be counted as one type of offence under the scheme. For example, a person who has committed say a spitting offence and a dog-fouling offence will be treated as a repeat offender for the purpose of the scheme.

3. Members expressed that imposing CSO for second-time offenders would be too harsh a punishment. The proposed penalty should be proportionate to the gravity of the offences. They also suggested the Administration to amend the definition of “repeat cleanliness offenders” as those who committed a second offence within a period of six or twelve months which would be less stringent than the Government’s proposed 24 months. Given its different nature, they considered that unauthorized posting of bills and posters should be handled differently and CSO should not be imposed on those offenders who are employed to post bills and posters.

REVISED PROPOSAL

4. Under the current laws, the Court can only consider the option of imposing CSO on a person convicted of an offence punishable with imprisonment terms and with the consent of the convicted person. Littering is punishable with imprisonment term under the Public Cleansing and Prevention of Nuisances Regulation (Chapter 132BK). Illegal display of bills/posters in certain venues (e.g. a stadium, pleasure grounds, etc.) is punishable with imprisonment term though not in all public places/streets. Spitting could also attract imprisonment term under the Summary Offences Ordinance (Chapter 228). Hence, the laws do empower the Court to impose CSO on offenders of certain cleanliness offences. The Government considered that the proposed penalty of CSO is not disproportionate to the gravity of the repeat cleanliness offences.

5. Taking into account Members’ views expressed earlier on the issue, we propose to revise our proposal as follows:-

- (i) CSO and a fine higher than \$1,500 could be imposed at the discretion of the Court on those who commit any of the three types of cleanliness offences, namely littering, spitting and dog-fouling, three times instead of twice in 24 months. There will be no change on the \$1,500 fixed penalty for a first-time/second-time offender of these three types of offences.

- (ii) Unauthorized posting of bills and posters is more a nuisance problem to shopkeepers and/or locals (e.g. posters promoting vice establishments) than public health. Most offenders are employed by companies to carry out this act. Imposing CSO on the offenders may not help deter companies from employing other workers to continue to post bills and posters. Imposing a fine higher than \$1,500 on such offences may achieve a greater deterrent effect on offenders and would increase the business cost of those companies. As there have been repeated complaints from the public on illegal posting of bills/posters and some members of District Councils have requested the government to take more effective action, we consider it necessary to adopt more stringent measures against the repeat offenders. As the nature of the offence is somewhat different from the other three cleanliness offences, we propose to treat the offence separately by issuing fixed penalty notices of \$3,000 and \$5,000 respectively for offenders who commit second and third time offences in such illegal posting activities within a period of 24 months. From 1 November 2003 to 31 October 2005, there were 194 offenders who committed the offence twice or more, among which 91 of them committed the offence three times or more.

6. The number of offenders who may be imposed the CSO under the revised proposal will be much lower than that under the former Team Clean's original proposal. From 1 November 2003 to 31 October 2005, more than 1300 offenders committed twice or more of the four cleanliness offences (including illegal posting of bills/posters) involving a total of around 2900 offences. During the same period, there were only 42 repeat offenders committed 3 offences or more of the three cleanliness offences (excluding illegal posting of bills/posters), involving a total of 132 offences.

7. Legislative amendments, including introducing imprisonment terms for spitting/dog fouling in public places and streets under the Public Cleansing and Prevention of Nuisances Regulation (Chapter 132BK), would need to be made at the same time that we implement the above CSO proposal.

ADVICE SOUGHT

8. Members are invited to comment on the revised proposal.

**Health, Welfare and Food Bureau
Food and Environmental Hygiene Department
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