

立法會
Legislative Council

LC Paper No. CB(4)1430/16-17
(These minutes have been seen
by the Administration)

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**Subcommittee on Two Proposed Resolutions
under the Fixed Penalty (Traffic Contraventions) Ordinance and
the Fixed Penalty (Criminal Proceedings) Ordinance**

**Minutes of the third meeting held on
Tuesday, 23 May 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Frankie YICK Chi-ming, JP (Chairman)
Hon James TO Kun-sun
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon YIU Si-wing, BBS
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHAN Chun-ying
Hon HUI Chi-fung
Hon LAU Kwok-fan, MH
Hon Jeremy TAM Man-ho

Members absent : Hon CHAN Han-pan, JP
Dr Hon Helena WONG Pik-wan
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung

- Public Officers attending** :
- Ms Ivy LAW
Deputy Secretary for Transport and Housing
(Transport)3
 - Mr Tony LI
Principal Assistant Secretary for Transport and
Housing (Transport) 2
 - Mr Raymond CHUNG Wah-fan
Chief Engineer/Strategic Roads
Transport Department
 - Ms Connie YAU Sin-man
Chief Superintendent/Traffic (Acting)
Hong Kong Police Force
 - Mr Michael YIP Siu-ming
Senior Superintendent of Police (Administration)
(Traffic Branch Headquarters) (Acting)
Hong Kong Police Force
 - Mr Gary LI Ming-fung
Government Counsel
Department of Justice
- Clerk in attendance :** Ms Doris LO
Chief Council Secretary (4)6
- Staff in attendance :** Ms Vanessa CHENG
Assistant Legal Adviser 5
- Ms Macy NG
Senior Council Secretary (4)6
 - Ms Emily LIU
Legislative Assistant (4)6

Action

- I. Meeting with the Administration**
(LC Paper No. CB(4)1068/16-17(01) - Administration's paper on its revised proposals

- LC Paper Nos. CB(4)973/16-17(01) - Letter dated 4 May 2017
and CB(4)1028/16-17(01) from Legal Adviser to the
Subcommittee to the
Administration and the
Administration's reply letter
dated 17 May 2017
- LC Paper Nos. CB(4)1028/16-17(02) - List of follow-up actions
and (03) arising from the meeting on
5 May 2017 and the
Administration's response
- LC Paper Nos. CB(4)932/16-17(01) - List of follow-up actions
and (02) arising from the meeting on
21 March 2017 and the
Administration's response)

The Administration briefed members on its revised proposals on increasing the fixed penalty charges for Congestion-Related Traffic Offences under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) (LC Paper No. CB(4)1068/16-17(01)) ("the Revised Proposals"). Under the Revised Proposals, the magnitude of increase was revised from the originally proposed 50% down to 25%.

2. The Subcommittee deliberated (index of proceedings is in **Annex**).
3. The Administration was requested to provide a paper before the next meeting of the Subcommittee stating whether it would take on board members' following views and suggestions, and if so, the further revised legislative proposals of the Administration. The views and suggestions of members were:
 - (a) reconsidering whether to retain the original proposal of increasing by 50% the fixed penalty charges for all or a certain item(s) of the six offences stipulated in the Schedule to Cap. 240, taking into account stakeholders' views including that of the transport trade; and
 - (b) instead of a uniform increase in the fixed penalty charges across the board for all offences under Cap. 237 by 50% or 25% as proposed by the Administration, excluding some parking-related offences from the increase or setting a lower level of increase in respect of some offences.

(Post-meeting note: The Administration's response was issued vide LC Paper No. CB(4)1232/16-17(02) on 14 June 2017.)

II. Any other business

4. Members agreed to receive views from deputations on the Revised Proposals and hold discussions with the Administration at the next meeting. There being no other business, the meeting ended at 10:00 am.

(Post-meeting note: The next meeting was scheduled for 19 June 2017 at 10:45 am.)

Council Business Division 4
Legislative Council Secretariat
18 July 2017

**Proceedings of the third meeting of
Subcommittee on Two Proposed Resolutions
under the Fixed Penalty (Traffic Contraventions) Ordinance and
the Fixed Penalty (Criminal Proceedings) Ordinance
on Tuesday, 23 May 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with the Administration			
001255 – 001755	Chairman Administration	Briefing by the Administration on its revised proposals on increasing the fixed penalty charges for Congestion-Related Traffic Offences under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) ("the Revised Proposals"). Under the Revised Proposals, the magnitude of increase was revised from the originally proposed 50% down to 25% (LC Paper No. CB(4)1068/16-17(01)).	
001756 – 002113	Chairman Assistant Legal Adviser ("ALA") Administration	<p>At the invitation of the Chairman, ALA5 informed members of the exchanges of views with the Administration on the issue regarding whether the Legislative Council ("LegCo") might prescribe, by resolution, different levels of fixed penalties instead of a uniform penalty for the different offences as provided for in section 4, 5, 6, 7, 8, 9, 10 or 11(1) of Cap. 237. Details were set out in the Administration's written response dated 26 April 2017 (item (a) in the Annex to LC Paper No. CB(4)932/16-17(02)), ALA5's letter dated 4 May 2017 (LC Paper No. CB(4)973/16-17(01)), and the Administration's further written response dated 17 May 2017 (LC Paper No. CB(4)1028/16-17(01)).</p> <p>In gist, ALA5 advised that:</p> <p>(a) the Administration was of the view that LegCo had not been empowered to prescribe by resolution under section 13 of Cap. 237 different levels of fixed penalties for different contraventions under Cap. 237;</p> <p>(b) in the first response dated 26 April 2017, it seemed that the Administration's argument much relied on the interpretation of the formulation of words of "<u>a fixed penalty</u>" [<i>underline added</i>] as appeared in section 13, the long title of Cap. 237 and the Explanatory Memorandum of the Fixed Penalty (Traffic Contraventions) Bill 1970 ("the 1970 Bill");</p> <p>(c) in the further response dated 17 May 2017, the Administration supplemented that the above view was reinforced by the Hansard for the 1970 Bill, which referred to a scheme of uniform penalty and the simplicity of such a scheme, as well as by the contrary intention as appeared from the context of Cap. 237 <i>vis-à-vis</i> the clear indications</p>	

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		<p>in the long title and Explanatory Memorandum of Cap. 240 that different levels of fixed penalty were prescribed for different offences by way of a Schedule; and</p> <p>(d) any amendments proposed by Members seeking to prescribe under section 13 of Cap. 237 different levels of fixed penalties for different contraventions under Cap. 237 would be subject to the rulings of the President of LegCo; and when determining the admissibility of such amendments, the President would, in addition to the above views of the Administration, take into account other considerations including relevant provisions of the Rules of Procedure, and views of the Counsel to the Legislature.</p>	
002114 – 002732	Chairman Mr Jeffrey LAM Administration	<p>Mr LAM expressed the views that:</p> <p>(a) to address critical road traffic problems, it was most important that the Police should step up targeted enforcement actions against Congestion-Related Traffic Offences at all times in particular at black spots;</p> <p>(b) increasing the fixed penalty charges by 50% could realize the amount of cumulative inflation over the years, but this did not necessarily mean that the increased charges could serve adequate deterrent effect; and</p> <p>(c) by revising the magnitude of increases from 50% down to 25%, the Revised Proposals appeared to be on contrary to the purpose of restoring the deterrent effect.</p> <p>The Administration advised that:</p> <p>(a) stringent enforcement actions had been taken against Congestion-Related Traffic Offences, as demonstrated by the substantial increases in the number of fixed penalty tickets ("FPTs") issued in the past decade. Notwithstanding this, illegal parking problem was still rampant. It was therefore necessary to, while continuing to strengthen enforcement, raise the level of the fixed penalty charges to restore the deterrent effect and increase the opportunity costs of committing such offences; and</p> <p>(b) having said that, the Administration proposed to moderate the magnitude of increases under the Revised Proposals, having regard to the views of members and deputations/individuals received at previous meetings of the Subcommittee. It was believed that the Revised Proposals should be more acceptable to the public while still moving a small step forward towards restoring the deterrent effect of the fixed penalty charges.</p>	

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		<p>The Chairman, however, pointed out that according to the statistics provided by the Administration under item (b)(i) in the Annex to LC Paper No. CB(4)932/16-17(02), the FPT to vehicle ratio had dropped by more than half from 4.63 in 1994 to 2.18 in 2016. He was therefore not convinced that the enforcement efforts were adequately enhanced.</p>	
002733 – 003626	Chairman Mr LAU Kwok-fan Administration	<p>Mr LAU indicated objection to the Revised Proposals. He opined that:</p> <ul style="list-style-type: none"> (a) he was not aware of any deputations/individuals who appealed for increasing the fixed penalty charges in phases at the Subcommittee meeting on 5 May 2017. To better gauge public views, another public hearing should be held; (b) the Administration had just resorted to an easy way out by adjusting the level of penalties under the Revised Proposals, without addressing the underlying issue of the shortage of parking spaces. Likewise, the patchy measures to mitigate the shortage of parking spaces recently presented to the Panel on Transport ("the Panel") were no less disappointing. The Administration should explore innovative means to address the shortage, which had been aggravated by the demolition of some car park buildings and cancellation of some on-street parking spaces; (c) the most effective means to combat illegal parking was to step up enforcement by taking targeted enforcement actions at black spots, issuing multiple/repeated FPTs, and strengthening manpower for enforcement; (d) instead of pegging to the cumulative inflation rate, adjustments in the fixed penalty charges should correspond with the general decline in the income level of commercial drivers over the past years; and (e) it was reasonable to increase the fixed penalty charges for the more serious traffic offences such as "U" turn causing obstruction, but not for those parking-related offences. <p>The Administration advised that:</p> <ul style="list-style-type: none"> (a) the Administration's parking policy was to accord priority to accommodating the needs of commercial vehicles. The limited land resources in Hong Kong did not permit the provision of additional parking spaces to match the rapidly growing private car fleet; and (b) in light of the rampant illegal parking problem and its adverse impact on road traffic conditions and roadside air 	

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		<p>quality, etc., it was necessary to increase the fixed penalty charges for all the Congestion-Related Traffic Offences under Cap. 237 and Cap. 240 to restore the deterrent effect.</p> <p>The Chairman relayed the objection of the transport trade against the Revised Proposals. He said that the Administration should first step up enforcement, and only after reviewing the effectiveness of the enforcement actions should it consider increasing the fixed penalty charges. He agreed that a public hearing should be held.</p>	
003627 – 004253	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN expressed the views that:</p> <p>(a) the FPT to vehicle ratio in 2016 had dropped significantly comparing to that in 1994. It was incumbent for the Administration to step up enforcement actions, including issuing multiple/repeated FPTs, and towing away illegally parked vehicles at critical locations; and</p> <p>(b) instead of increasing uniformly the fixed penalty charges for all Congestion-Related Traffic Offences, the Administration might consider taking on board members' suggestion of a differential treatment by increasing the fixed penalty charges by 50% for the more serious traffic offences, such as "U" turn causing obstruction and unlawfully entering box junction, but not for parking-related offences.</p> <p>The Administration advised that:</p> <p>(a) pursuant to the internal guidelines of the Police, two hours after issuing an FPT to an illegally parked vehicle, another FPT could be issued to the same vehicle if it had not been moved. For vehicles left on any road for a certain period of time and caused serious obstruction, the Police would tow away the vehicles if the car owners concerned could not be contacted;</p> <p>(b) some motorists tended to take the risk of parking illegally when no police officers or traffic wardens were around. The fixed penalty charges should be increased to increase the opportunity costs of parking illegally; and</p> <p>(c) the suggested differential treatment of offences under Cap. 237 and Cap. 240 might disappoint those members of the public affected by traffic congestion, and undesirably gave rise to a misconception that the Government was condoning illegal parking. That said, the Administration was willing to study the suggestion if there was a consensus among members of the Subcommittee.</p>	

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		<p>The Chairman considered that there was no need to be overworried that the suggested differential treatment would amount to encouraging illegal parking.</p>	
004254 – 004922	Chairman Mr YIU Si-wing Administration	<p>Mr YIU agreed to hold a public hearing to receive public views on the Revised Proposals. He expressed the views that:</p> <ul style="list-style-type: none"> (a) the causes of the illegal parking problem were multiple. Increasing the fixed penalty charges against Congestion-Related Traffic Offences alone could not fully address the problem; and (b) the Administration should establish short, medium and long-term measures to solve the problem, including taking stringent enforcement actions, amending outdated legislation and increasing the number of parking spaces. <p>The Administration advised that:</p> <ul style="list-style-type: none"> (a) it had taken a multi-pronged approach to tackle the road traffic problem. In tandem with increasing the fixed penalty charges, it would continue to enhance enforcement, accord priority to addressing the parking needs of commercial vehicles while suitably providing parking spaces for private cars, and take measures to control the growth of the private car fleet. It would review the need for amending the existing road traffic legislation as and when necessary; and (b) the Revised Proposals offered a balance of meeting public aspirations for tackling traffic congestion, while paying due regard to the impact on professional drivers. 	
004923 – 005732	Chairman Mr Jeremy TAM Administration	<p>Mr TAM reiterated his views that:</p> <ul style="list-style-type: none"> (a) instead of a uniform increase in the fixed penalty charges for all offences under Cap. 237, the Administration should exclude some parking-related offences from the increase or set a lower level of increase in respect of some offences. For some serious offences, such as stopping in a zebra controlled area and parking on traffic island, the original increase by 50% should be retained to achieve a deterrent effect. He stated that he would move relevant amendments to the proposed resolution in respect of Cap. 237; (b) the original increase by 50% of the fixed penalty charges for the six offences under Cap. 240, in particular "U" turn causing obstruction and unlawfully entering box junction, should be retained; and 	

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		<p>(c) the Administration should promulgate the whole package of policies and measures for tackling traffic congestion, instead of taking a patchy approach to push forward the increases in fixed penalty charges while the consultancy study on commercial vehicle parking would only be completed in two years' time.</p> <p>Mr TAM further asked if the Police had conducted joint operations with the Food and Environmental Hygiene Department ("FEHD") against illegal parking.</p> <p>The Administration advised that:</p> <p>(a) it was taking forward progressively the short, medium and long-term measures recommended by the Transport Advisory Committee to tackle the traffic congestion problem. One of the measures was to increase the fixed penalty charges for Congestion-Related Traffic Offences;</p> <p>(b) the Administration's policy on provision of parking spaces and measures to mitigate shortage of parking spaces were clearly stated in the paper provided to the Panel in May 2017 (LC Paper No. CB(4)1021/16-17(09));</p> <p>(c) the Administration maintained the view that LegCo had not been empowered to prescribe by resolution under section 13 of Cap. 237 different levels of fixed penalties for different contraventions under Cap. 237. It was aware that admissibility of amendments to the proposed resolutions would be subject to the rulings of the President of LegCo;</p> <p>(d) if there was a unanimous consensus among members of the Subcommittee or upon a motion passed by the Subcommittee, the Administration would be willing to consider retaining the original proposal of increasing by 50% the fixed penalty charges for Congestion-Related Traffic Offences under Cap. 240; and</p> <p>(e) the Police had conducted joint operations with FEHD relating to street obstruction, during which the Police would take enforcement actions against illegal parking.</p>	
005733 – 010230	Chairman Mr HUI Chi-fung Administration	Mr HUI enquired about the existing number of traffic wardens and any plans of the Administration to increase their number to strengthen enforcement against illegal parking. He also asked if the number of traffic wardens deployed to a specific district was pegged to the number of parking meters there.	

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		<p>The Administration advised that:</p> <ul style="list-style-type: none"> (a) the establishment of traffic wardens stood at about 300 in recent years. Both police officers and traffic wardens could issue FPTs. However, despite the input of extra resources by the Police for enforcement, illegal parking was still rampant. It was therefore necessary to restore the deterrent effect of the fixed penalty charges. Meanwhile, the Administration was also exploring the use of technology to enhance the effectiveness of enforcement against traffic offences; and (b) the role of traffic wardens was to support enforcement actions against traffic offences, and hence their deployment would depend on the relevant operational needs in individual police districts, but not the number of parking meters in a specific district. 	
010231 – 010953	Chairman Administration	<p>The Chairman expressed the views that:</p> <ul style="list-style-type: none"> (a) without effective measures by the Administration to address the shortage of parking spaces in particular for commercial vehicles, the transport trade would persist in opposing the Revised Proposals; (b) in light of the decline in the income level of commercial vehicle drivers over the years and their financial burden, the current level of fixed penalty charges was not lacking in deterrent effect on them; and (c) the Administration should take stringent enforcement actions particularly at black spots, and tow away illegally parked vehicles. It should also explore additional means to enable effective law enforcement, such as installing closed-circuit television to facilitate enforcement against vehicles unlawfully entering into box junction. <p>The Chairman sought members' views on whether they agreed that the Administration should deal with the fixed penalties for offences under Cap. 237 and Cap. 240 separately. It was noted generally that members had strong reservation about increasing the fixed penalties for most of the offences stipulated in Cap. 237. As for Cap. 240, subject to his further consultation with the transport trade which had initially expressed reservation about increasing the fixed penalty for loading/unloading goods in restricted zone, the Chairman said that the Subcommittee did not have major objection to increasing the fixed penalties for the other Congestion-Related Traffic Offences thereunder.</p>	

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		<p>After the discussion, the Chairman requested the Administration to provide a paper before the next meeting stating whether it would take on board members' views and suggestions, and if so, the further revised legislative proposals. The views and suggestions of members were:</p> <p>(a) reconsidering whether to retain the original proposal of increasing by 50% the fixed penalty charges for all or a certain item(s) of the six offences stipulated in the Schedule to Cap. 240, taking into account stakeholders' views including that of the transport trade; and</p> <p>(b) instead of a uniform increase in the fixed penalty charges across the board for all offences under Cap. 237 by 50% or 25% as proposed by the Administration, excluding some parking-related offences from the increase or setting a lower level of increase in respect of some offences.</p>	Administration (paragraph 3 of the minutes refers)
010954 – 011656	Chairman Mr LAU Kwok-fan Administration	<p>Mr LAU reiterated that without a clear plan for the provision of car parking spaces and strengthening law enforcement against illegal parking at black spots, he would not accept any proposals to increase the fixed penalty charges for Congestion-Related Traffic Offences. He considered that:</p> <p>(a) District Councils ("DCs") should be invited to give information on the locations of black spots of illegal parking in respective districts; and</p> <p>(b) the major burden of issuing FPTs should not be rest on frontline police officers who had more important law enforcement duties. Instead, more traffic wardens should be employed. Yet, he was disappointed that the number of traffic wardens in the North District was as low as two.</p> <p>The Administration advised that:</p> <p>(a) the Police had assign representatives to attend regular meetings of the Traffic and Transport Committee of DCs, and were well aware of the locations of black spots of illegal parking for taking targeted enforcement actions; and</p> <p>(b) the Police would suitably deploy traffic wardens to meet operational needs in different districts. The number of traffic wardens in New Territories North was at a double-digit level.</p>	
011657 – 012507	Chairman Mr Jeremy TAM Administration Mr James TO	Mr TAM reiterated that he had no objection to increasing by 50% the fixed penalty charges for the six offences under Cap. 240, but he would move amendments to exclude some parking-related offences from the increase or setting a lower	

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		level of increase in respect of some offences under Cap. 237. In response to Mr TAM's concern that some on-street night-time parking spaces for commercial vehicles were occupied by non-vehicular items, the Administration advised that it would follow up the cases mentioned and carry out joint operations on street management with relevant government departments from time to time.	
012508 – 012945	Chairman Mr James TO Administration	Mr TO would not support any level of increase in the fixed penalty charges for the traffic offences under Cap. 237 if the Police failed to enhance law enforcement at black spots. He would first hear public views before forming an opinion on the fixed penalty charges for the six offences under Cap. 240 under the Revised Proposals.	
Agenda item II – Any other business			
012946 – 013045	Chairman Administration	Arrangement for a public hearing and concluding remarks	