

For discussion on  
on 19 January 2023

**Advisory Council on Food and Environmental Hygiene**

**Public Consultation on Proposal to Raise the Level of Fixed Penalty  
for Public Cleanliness and Obstruction Offences**

**Purpose**

To combat environmental hygiene problems such as littering, shopfront extension and disposal of waste in a more effective manner, the Government put forth proposals to raise the existing fixed penalty of \$1,500 for the scheduled offences under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) (“Fixed Penalty Ordinance”) to achieve greater deterrent effect; and to make related legislative amendments. We launched a one-month public consultation on the proposals on 19 December 2022. This paper highlights the key proposals and invites Members’ views.

**Background**

2. The Government is committed to enhancing the environmental hygiene and cityscape of Hong Kong. The Chief Executive announced in the 2022 Policy Address that the next steps of the District Matters Co-ordination Task Force include conducting a comprehensive review on the existing statutory powers and penalties relating to environmental hygiene. The first stage is to propose raising the fixed penalty level related to environmental hygiene offences. At the next stage, we will comprehensively review the existing statutory powers and penalties relating to environmental hygiene, with a view to enhancing the efficiency, effectiveness and deterrent effect of enforcement actions against thorny environmental hygiene problems. The second stage legislative amendment proposals will be formulated in around mid-2023.

**Key Proposals**

3. Detailed proposals and justifications of raising the fixed penalty levels are set out in the consultation document at **Annex**. Salient points are highlighted below.

**Littering, disposal of waste and spitting**

4. At present, there are nine scheduled offences under Schedule 1 of the Fixed Penalty Ordinance. The level of fixed penalty has remained at \$1,500

since June 2003. To further strengthen the deterrent effect and suitably reflect the impact of the offences on environmental hygiene, we propose to raise the fixed penalty level for the following seven scheduled offences which mainly involve the conduct of individual members of the public from \$1,500 to **\$3,000** (i.e. doubling the existing fixed penalty level). The scheduled offences include –

- (a) Display of bills or posters without permission;
- (b) Depositing of litter or waste in public places;
- (c) Spitting in public places;
- (d) Fouling of street by dog faeces;
- (e) Depositing of litter in country parks and special areas;
- (f) Spitting in country parks and special areas; and
- (g) Marine littering.

#### Shopfront extension

5. The offence of obstruction of public places under the Fixed Penalty Ordinance mainly targets at shopfront extension (“SFE”). The number of fixed penalty tickets issued for “obstruction of public places” increased substantially in the past few years, from about 7 600 in 2019 to nearly 14 900 in 2021, which is almost a double. During the same period, the number of complaints against SFE increased significantly from about 15 000 to nearly 23 500, representing an increase of about 57% and reflecting that the problem of SFE is deteriorating. While the Government has already stepped up enforcement actions against SFE which has achieved positive results, we consider it necessary to substantially raise the fixed penalty level to achieve greater deterrent effect to sustain the results. In particular, some non-compliant shop operators treat the fixed penalty as rental and operating costs for using the space outside their shops illegally, which is unfair to compliant operators. Our proposal is to raise the fixed penalty level for “obstruction of public places” from \$1,500 to **\$6,000**.

#### Disposal of large amount of construction or other waste

6. The legislative intent of section 16A(1) of the Waste Disposal Ordinance (Cap. 354) (i.e. “unlawful depositing of waste”, an offence under the Fixed Penalty Ordinance) is to tackle illegal disposal of a large amount of construction or other waste. The problem of unlawful depositing of waste is deteriorating and Government departments need to separately arrange for clearance and disposal incurring additional public money. Taking 2021 as an example, the amount of construction waste illegally disposed of at public places and cleared by the Government was over 2 000 tonnes. In addition, some free-riders may seek to evade the charge for disposal of construction waste<sup>1</sup> through

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<sup>1</sup> The charge for different types of construction waste received by the Government’s waste disposal facilities ranges from \$71 per tonne to \$200 per tonne.

illegal disposal and some even treat the penalty as an operating cost for disposal of construction waste. Substantially raising the fixed penalty level can reduce the financial incentive to evade the charge. Our proposal is to raise the fixed penalty level for “unlawful depositing of waste” from \$1,500 to **\$6,000**.

#### Other related legislative amendments

7. The scheduled offences under the Fixed Penalty Ordinance are all offences under the corresponding legislation<sup>2</sup>. Enforcement officers may, depending on the circumstances, consider issuing a fixed penalty ticket in accordance with the Fixed Penalty Ordinance, or initiating prosecution against the suspected offender in accordance with the relevant legislation (summarily or on indictment). As explained in the consultation paper (paragraphs 2.12 and 2.13), the maximum fines which the court may impose for scheduled offences under the corresponding legislation should be at least a double of the amount of the fixed penalty or above. In light of the proposed increase in the fixed penalty level, amendments should be made to the maximum fines which the court may impose for five of the scheduled offences under the corresponding legislation.

#### “Progressive fixed penalty”

8. As explained in paragraphs 2.16 to 2.19 of the consultation paper, we do **not** recommend the introduction of “progressive fixed penalty” at this stage because it may cause unnecessary conflicts between frontline enforcement officers and members of the public; complicate the enforcement procedures on the ground and take longer to implement. We therefore recommend issuing multiple fixed penalty tickets to repeated offenders in a short period of time to achieve similar deterrent effects.

#### Enforcement, publicity and education

9. Apart from raising the fixed penalty level, we will continue to step up enforcement efforts. Relevant departments will also continue to carry out publicity and education, as well as promote community participation to publicise information on environmental hygiene. To complement the work of raising the fixed penalty level, we will also remind the public of the importance of law abidingness and the consequences of non-compliance.

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<sup>2</sup> Namely the Public Health and Municipal Services Ordinance (Cap. 132), the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK), the Country Parks and Special Areas Regulations (Cap. 208 sub. leg. A), the Summary Offences Ordinance (Cap. 228) and the Waste Disposal Ordinance (Cap. 354).

## **Advice Sought**

10. Members are invited to comment on the proposals. We plan to finalise the proposals and introduce the amendment bill into the Legislative Council in around mid-2023.

**Environment and Ecology Bureau  
Environmental Protection Department  
Food and Environmental Hygiene Department  
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