

**Advisory Council on Food and Environmental Hygiene**

**Preliminary Proposals for the Second-stage Review on  
Environmental Hygiene-related Legislation**

**Purpose**

The District Matters Co-ordination Task Force has reviewed the environmental hygiene-related legislation in two stages with a view to enhancing enforcement efficiency and the deterrence effect of the legislation, so as to achieve sustainable improvements in environmental hygiene. The first-stage legislative review has been completed and its results have been reported to this Council and the LegCo Panel on Food Safety and Environmental Hygiene. This paper briefs Members on the findings of the second-stage legislative review and invites Members' views on the preliminary proposals on legislative amendments and administrative measures.

**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 Government would conduct a comprehensive review on the existing statutory powers and penalties related to environmental hygiene, in order to enhance the Government's efficiency, effectiveness and deterrence in handling various thorny environmental hygiene problems. On 19 January 2023, we consulted the Advisory Council on Food and Environmental Hygiene (ACFEH) on our first-stage legislative proposals for raising the level of fixed penalty for public cleanliness and obstruction-related offences. The relevant Amendment Bill was subsequently introduced into the Legislative Council (LegCo) on 17 May 2023<sup>1</sup>. The second-stage legislative review has also been completed.

---

<sup>1</sup> On 17 May 2023, the Government introduced into the LegCo the Fines and Fixed Penalties (Public Cleanliness and Obstruction) (Miscellaneous Amendments) Bill 2023 to raise the level of fixed penalty for public cleanliness and obstruction-related offences and to make other related legislative amendments. Subject to the approval by the LegCo, the relevant amendments are expected to take effect on 22 October 2023. Relevant amendment proposals can be found in ACFEH Paper 1/2023.

3. The second-stage legislation review covers the following “long-standing, big and difficult” environmental hygiene and street management issues of wide public concern<sup>2</sup> –

- (a) shopfront extension (SFE);
- (b) public health nuisances such as water seepage in buildings, water dripping from air-conditioners and “garbage apartments”;
- (c) proliferation of pests;
- (d) occupation of public places (e.g. rear lanes) by miscellaneous articles causing obstruction to scavenging operations; and
- (e) illegal display or affixation of bills or posters.

We propose to amend the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO) and other related ordinances, supplemented by additional administrative measures, to enhance the efficiency, effectiveness and deterrence of enforcement, thereby achieving long-term improvements in environmental hygiene and street management.

### **Preliminary proposals of legislative amendments and administrative measures**

#### **Shopfront extension**

4. At present, the Food and Environmental Hygiene Department (FEHD), having regard to the circumstances of individual cases, may institute prosecutions<sup>3</sup> against the persons in charge of the shops causing obstruction in accordance with Section 4A of the Summary Offences Ordinance (Cap. 228), or issue fixed penalty notices (FPNs) under the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570). To raise non-compliance cost for offenders, since September 2021, the FEHD and the Hong Kong Police Force (the Police) have adopted a new enforcement mode under which the Police requires the shops causing obstruction to remove the obstructing items within a specified time in

---

<sup>2</sup> In 2022, the Food and Environmental Hygiene Department has received 24,000, 40,000, 26,000, 11,000 and 2,800 complaints about shopfront extension, water seepage in buildings, water dripping from air-conditioners, rodent infestation and illegal display of bills or posters respectively.

<sup>3</sup> Subject to the approval of the Fines and Fixed Penalties (Public Cleanliness and Obstruction) (Miscellaneous Amendments) Bill 2023 by the LegCo, the fixed penalty level of street obstruction will be raised from \$1,500 to \$6,000; and for prosecution by way of summonses, the maximum penalty which may be imposed by the court will be raised from a fine at level 2 (\$5,000) or imprisonment for three months to a fine at level 4 (\$5,000) or imprisonment for three months.

accordance with the Summary Offences Ordinance, otherwise, the FEHD will assist the Police in removing those items.

5. The existing provisions and enforcement arrangements against SFE have the following limitations –

- (a) the FEHD is not empowered to remove and confiscate obstructing articles; and the presence of the Police is required during enforcement operations in order to exercise its relevant power;
- (b) the FEHD has to store the obstructing perishable goods (e.g. fresh fruit and vegetables) after removing them. The high preservation cost and limited capacity of the facilities have hindered enforcement efficiency;
- (c) law enforcement officers must be physically present at the shops to gather evidence and take enforcement action against the persons causing the obstruction, thus constraining the FEHD's enforcement strategy such as using video recording; and
- (d) the current maximum penalty which may be imposed by the court has not provided for a higher penalty level for repeated cases, compromising its deterrent effect to repeated offenders.

6. We propose the following legislative amendments to tackle the above limitations –

- (a) introduce a new provision against SFE, **empowering the FEHD to require shops to remove obstructing articles within a specified time**; otherwise the department may remove and even confiscate such items, **without relying on the power of the Police**, thereby enhancing FEHD's effectiveness in handling SFE on its own;
- (b) empower the FEHD **to dispose of perishable goods immediately** after they have been removed<sup>4</sup>, and introduce a compensation mechanism to compensate the concerned shops which are not convicted of SFE;
- (c) empower the FEHD to issue FPNs to or institute prosecution

---

<sup>4</sup> This proposal aligns with the FEHD's existing enforcement arrangement of removing the equipment and commodities of illegal hawkers empowered by the PHMSO.

against the holder of the business registration certificate (BRC) of a shop causing obstruction based on **images/videos captured by video cameras**, and the BRC holder of the shop causing obstruction will have committed an offence if there is no reasonable defence. At the same time, we propose requiring the shop to produce its BRC upon FEHD's request; and

- (d) raise the maximum level of fine and term of imprisonment which may be imposed by the court on the second or subsequent conviction. The initial proposal is to have a **maximum fine at level 4 (\$25,000) and imprisonment for 3 months** on first conviction; and a **maximum fine at level 5 (\$50,000) and imprisonment for 6 months** on second or subsequent conviction.

**Public health nuisances such as water seepage in buildings, water dripping from air-conditioners and “garbage apartments”**

- (i) General power of and penalties for entering the flat concerned and abating nuisances

7. At present, upon receipt of a report of public health nuisance problems such as water seepage in buildings, water dripping from air-conditioners and “garbage apartments”, the FEHD will generally seek to enter the flat concerned for investigation and tests. Pursuant to Section 126 of the PHMSO, public officers, on producing documentary identification and notifying the relevant occupier as appropriate, have a right to enter the any flat for investigation and tests. If FEHD officers fail to enter the flat or the occupier of the flat is not present, the FEHD will issue a Notice of Intended Entry to the owner/occupier concerned to make an appointment for entering the flat. Upon confirmation of the source of a nuisance, the FEHD may issue a Nuisance Notice to the owner/occupier under Section 127 of the PHMSO to require the owner/occupier to abate the nuisance within a period specified in the notice. If the owner/occupier of the flat concerned fails to comply with the requirements of the notice, he or she commits an offence. The FEHD may also apply to the court for a Nuisance Order to require the person concerned to abate the nuisance within the period specified in the order. Any person who fails to comply with the requirements of the order commits an offence.

- 8. The key factors in handling nuisance problems are as follows –

- (a) upon receiving a report, the FEHD to enter the flat concerned for investigation and/or tests without being unreasonably delayed; so as to confirm the source of a nuisance as soon as practicable; and
- (b) to effectively ensure that the owner/occupier has taken measures to abate the nuisance within the specified time after the source of a nuisance is confirmed.

9. We propose the following legislative amendments for handling all public health nuisance problems under the PHMSO –

- (a) extend the access period for public officers to enter the premises concerned for investigating nuisance incidents to **between 7 am and 10 pm**, instead of between 7 am and 7 pm as at present, such that some incidents which appear at later time at night can also be covered;
- (b) add a provision specifying that any property owner/occupier who fails to comply with the **Notice of intended Entry** issued by public officers without any reasonable excuse commits an offence and is liable to a **maximum fine at level 2 (\$5,000)**; the FEHD will also explore introducing provisions for avoiding unreasonable delays;
- (c) raise the penalties for non-compliance of Nuisance Notice and Nuisance Order, with the former being raised to a **maximum fine of level 4 (\$25,000) and a daily fine of \$450** from the current level 3 (\$10,000) and a daily fine of \$200, and the latter being raised to a **maximum fine of level 5 (\$50,000) and a daily fine of \$600** from the current level 4 (\$25,000) and a daily fine of \$450; and
- (d) empower public officers to require the premises concerned to provide proof of abating the nuisance.

(ii) Water seepage in buildings

10. At present, the Joint Office for investigating of reports on water seepage (the JO) conducts investigation upon receipt of water seepage

complaints in three sequential stages<sup>5</sup>. After proving the source of seepage (with the proof being beyond reasonable doubt in compliance with the threshold of criminal investigation), the FEHD will issue a Nuisance Notice to the owner/occupier of the flat confirmed to be the source of water seepage in accordance with Section 127 of the PHMSO and may apply to the court for a Nuisance Order as necessary.

11. In addition to the proposed legislative amendments as mentioned in paragraph 9 above, we propose the following administrative measures to more effectively handle cases of water seepage –

- (a) combine Stages II and III of the investigation in certain districts on a trial basis starting from Q3 this year, to try out whether the investigation time required for applicable cases could be reduced by 30% from 90 to some 60 working days<sup>6</sup>. The JO will also review the procedures for result checking after completion of the onsite investigation, in order to further shorten the investigation time;
- (b) civil litigation may cover those cases which cannot be dealt with under the PHMSO, as its standard of proof of the source of water seepage **needs not be beyond reasonable doubt**. We will explore **providing** the relevant persons (including the complainants and complainees) with copies of the water seepage **investigation report** by the JO for reference **for free**, so that they may consider pursuing other methods (e.g. by way of seeking opinions from loss adjusters) and resolve the disputes arising from water seepage by civil means;
- (c) apart from the current use of Infrared Thermography and Microwave Tomography in water seepage investigation, the JO will in consultation with relevant departments **make further good use of technology**, including studying the use

---

<sup>5</sup> In Stage I, the JO measures the moisture content of the seepage area to confirm whether there is a need for investigation. If the moisture content reaches 35% or above, Stage II investigation will be arranged. In Stage II, the JO conducts basic tests on drainage pipes and water supply pipes. If the source of seepage cannot be identified, the JO will appoint a consultant to carry out Stage III investigation. In Stage III, consultant conducts professional tests of the floor slab, walls, etc. of the flat and, should the situation warrant, uses such technologies as Infrared Thermography and Microwave Tomography for detecting the source of water seepage.

<sup>6</sup> Of the cases received over the past year, about 70% of investigations were completed within the target of 90 working days. The progress of the investigation is subject to a number of factors, including the complexity of the case, such as whether more than one source of water seepage is involved, repeated or intermittent water seepage conditions requiring multiple tests; and whether the owners or occupiers are cooperative.

of Ground Penetrating Radar to detect and display water seepage inside concrete layers in real time;

- (d) as the property management companies have certain role in mediating disputes between households and resolving nuisance situations, relevant departments will study ways to deal with water seepage from building management perspective, such as adding new provisions in future deeds of mutual covenant to **authorize property management companies** to conduct investigation on water seepage in housing estates; and
- (e) the Buildings Department will also study ways to prevent water seepage **from the perspective of building design and construction.**

(iii) Water dripping from air-conditioners

12. The procedure of handling cases of water dripping from air-conditioners is the same as that of handling nuisance problems as mentioned above, including issuing the Notice of Intended Entry to the flat concerned, issuing the Nuisance Notice to the owner/occupier of the relevant flat upon confirmation of source of water dripping and applying to the court for the Nuisance Order as necessary.

13. In addition to the proposed legislative amendments as mentioned in paragraph 9 above, we propose the following administrative measures to more effectively handle cases of water dripping from air-conditioners –

- (a) targeting those buildings which have not yet installed air-conditioner drainage pipes<sup>7</sup>, the Development Bureau and the Urban Renewal Authority have strongly encouraged owners to use the remaining grant upon completion of the statutory works under the **Operation Building Bright 2.0** to **install air-conditioner drainage pipes** in the common parts of the building;
- (b) as the sources of water dripping from air-conditioners may be located on higher floors of high-rise buildings or visually blocked by other objects, the FEHD will continue to make use of technology. Aside from using retractable and adjustable video borescope inspection cameras with LED lamps, it is

---

<sup>7</sup> For new building developments since 2000, the Buildings Ordinance requires their provision of appropriate drainage for air conditioner condensate.

currently exploring the use of 5G technology for installing Internet Protocol cameras and thermal imaging cameras at suitable locations outside buildings with more serious water dripping from air-conditioners, in order to record the temperature difference between water droplets and the outside temperature to determine the source of water dripping in real time; and

- (c) the FEHD will further **promote** the existing **Scheme of Participation by Property Management Agents in Tackling Dripping Air-conditioners**<sup>8</sup> to more private housing estates.

(iv) “Garbage apartments”

14. Complaints related to “garbage apartments” typically cause nuisances to nearby residents and may cause environmental hygiene problems among others. Nevertheless, as such problem often involves the elderly, persons with mental disabilities or the financially disadvantaged, resorting to legal means alone to enter the flat for investigation and handling may not be the most effective and thorough solution.

15. We propose to strengthen the handling of the problem of “garbage apartments” through both legislative amendment and provision of assistance. On the legislation side, at present, Section 20 of the PHMSO empowers the FEHD to require the person concerned to remove “litter” or “waste”; and if the person concerned does not comply with the notice, the FEHD may remove the “litter” or “waste”. However, the term “litter” under the PHMSO includes “any substance likely to constitute a nuisance”, but not “article”, which may result in restrictions for the FEHD in clearing articles in “garbage apartments”. We, therefore, propose to amend the PHMSO by **adding “article”** in the existing **definition of “litter”**, in order to more effectively clear articles in “garbage apartments”.

16. On the administrative side, upon receiving complaints, the FEHD will liaise with other departments such as the Home Affairs Department and the Social Welfare Department as early as possible, such that the relevant departments can strengthen the support given to the person

---

<sup>8</sup> Under the scheme, the FEHD solicits participation from respective property management agents in handling complaints on water dripping air-conditioners during summer season. Staff of participating property management agents, while performing routine management duties in the estate, will help to identify the source of water dripping and advise the occupier concerned to rectify the problem. If such effort of the property management agents cannot resolve the complaint, the FEHD will then intervene by taking up the case.



concerned and provide assistance from the perspectives of welfare and mental health, with a view of addressing the problem at root. Relevant departments will also strengthen inter-departmental collaboration in formulating and taking joint operations based on the “standard operation mode”.

### **Proliferation of pests**

17. In general, the FEHD will serve a notice (notice for destroying vermin) on the owner/occupier of individual premises infested with vermin under Section 47 of the PHMSO to require the person concerned to take steps to destroy and remove vermin within a specified time; otherwise, the person concerned commits an offence. At the same time, the FEHD may also consider conducting/arranging for the pest disinfection work required and recover the relevant expenses from the owner/occupier of the premises. Should the situation warrant, the FEHD may take reasonable steps to destroy or remove vermin in premises without serving notices for destroying vermin on the person concerned. Furthermore, Section 47 of the PHMSO stipulates that any person who knowingly interferes with, removes or destroys the traps or baits, etc. placed by the FEHD in premises for destroying and removing vermin without lawful authority or excuse shall be guilty of an offence.

18. The existing provisions for handling the problem of the proliferation of pest have the following limitations –

- (a) pest infestation may occur in common parts of buildings, but the existing provisions do not empower the FEHD to serve notices for destroying vermin on management companies which manage common parts of the buildings;
- (b) the penalty for non-compliance with the notice for destroying vermin is not heavy enough; hence the deterrent effect is insufficient;
- (c) the FEHD is not expressly empowered to set up equipment (such as traps or baits, etc.) in public places and premises infested with vermin for conducting tests or assessing pest infestation. Tampering with such equipment is also not an offence; and
- (d) under the existing provisions, without serving the notices of destroying vermin on the owner/occupier of the premises, the FEHD is not allowed to recover the associated expenses from the person concerned for conducting pest disinfection work.

The person concerned may regard this as a free service by the Government and thus lack the motivation to clean up their own premises.

19. In view of the above, we propose the following legislative amendments –

- (a) explore **empowering the FEHD to serve notices for destroying vermin on management companies** in respect of pest infestation in common parts of buildings, requiring the management companies concerned to take measures to destroy and remove vermin within a specified time;
- (b) raise the penalty for non-compliance with the notice of destroying vermin to **a maximum fine at level 4 (\$25,000) and a daily fine of \$450** from the current level 2 (\$5,000) and a daily fine of \$100, so as to align with the penalty for non-compliance with anti-mosquito breeding notices;
- (c) empower the FEHD to, where the situation warrants, set up equipment or devices in public places and premises infested with vermin for conducting tests or assessing pest infestation; and provide for a new offence forbidding the interference with any relevant equipment and devices, with **a maximum fine at level 2 (\$5,000)**. The maximum fine of interfering any devices used for destroying or removing any vermin will also be raised to **level 2 (\$5,000)** from the current level 1 (\$2,000); and
- (d) empower the FEHD to **recover from the person in charge of the premises the expenses, arising from the pest disinfection work** carried out for him or her under specific circumstances, even if no prior notice for destroying vermin has been served.

**Occupation of public places (e.g. rear lanes) by miscellaneous articles causing obstruction to scavenging operations**

20. Various Government departments, in carrying out their duties, now tackle different problems of occupation of public places by miscellaneous articles<sup>9</sup>. Amongst these problems, if the occupation of public places

---

<sup>9</sup> For example, the Transport Department, the Highways Department, the Home Affairs Department and the Lands Department have conducted joint operations in tackling the obstruction problem of abandoned vehicles in rear lanes.

causes obstruction to the FEHD's scavenging operations, staff of the FEHD may exercise the power under the provision of Section 22 of the PHMSO on obstruction to scavenging operations. Nevertheless, as specified by the PHMSO, the owner will be given 4 hours to remove the obstructive articles, and the FEHD can only remove such articles after the expiration of the notice period. Also, the deterrent effect concerning the maximum fine for obstruction to scavenging operations is insufficient. We therefore propose the following legislative amendments –

- (a) **shorten the time** given to the person concerned **for removing the articles** obstructive to scavenging operations (from 4 hours to **“not less than 30 minutes”**<sup>10</sup>) to avoid abuse; and
- (b) raise the penalty to **a maximum fine at level 3 (\$10,000) and a daily fine of \$300** from the current level 2 (\$5,000) and a daily fine of \$50 to strengthen the deterrent effect.

### *Illegal display or affixation of bills or posters*

21. The public and the local communities have always been concerned about the problem of street obstruction caused by the setting up of display fittings like easy-mount frames for promotion on busy streets by commercial organisations (e.g. telecommunication companies). At present, the PHMSO stipulates that any person who displays or affixes any bill or poster without written permission of the Authority or the owner/occupier of the land shall be guilty of an offence. Staff of the FEHD may remove the bill or poster concerned and recover the removal costs from the person displaying or affixing the bill or poster. Nevertheless, the PHMSO only expressly allows law enforcement officers to remove bills or posters, but does not empower them to remove display fittings like easy-mount frames (which can only be taken away as evidence). Also, the present maximum fine for illegal displaying or affixing of bills or posters does not carry sufficient deterrent effect, especially for commercial organisations.

22. We propose the following legislative amendments –

- (a) expressly empower law enforcement officers **to remove and handle display fittings like easy-mount frames**, in addition to bills or posters; and

---

<sup>10</sup> The time limit for removal of articles will be clearly stated in the notice to the article owner and, by taking into account the actual circumstances, a longer time may be given to the person concerned (e.g. street sleepers) to remove their articles.

- (b) raise the penalty to **a maximum fine at level 4 (\$25,000) and a daily fine of \$450** from the current level 3 (\$10,000) and a daily fine of \$300 to strengthen the deterrent effect.

23. As regards administrative measures, the FEHD will increase the frequency and scale of clean-ups at illegal bill/poster black spots. At the same time, the FEHD will strengthen its internal guidance and remind its officers to issue warning letters and institute prosecutions against beneficiaries of the illegal display or affixation of bills or posters for suitable cases.

### **Proposal of introducing a progressive fixed penalty system for shopfront extension**

24. There are opinions that the Government should introduce a progressive fixed penalty system for SFE offences<sup>11</sup>. After careful examination from various perspectives, we consider it inappropriate to introduce such proposal at this stage. The specific reasons are –

- (a) in terms of the legislative intent, the establishment of a fixed penalty system is to provide a simple and effective way to deal with environmental hygiene cases which are straightforward, clear-cut and capable of being easily established, whereas the progressive fixed penalty system may give rise to disputes regarding the circumstances of individual cases. If the person concerned raises a dispute over the relevant liability, the case will eventually have to be handled by the court;
- (b) in terms of enforcement efficiency, we already proposed raising the level of fixed penalty for SFE offences from \$1,500 to **\$6,000** in the first stage of the legislative review. It is believed that this, coupled with the enforcement strategy of **issuing multiple FPNs** to repeated offenders within a short period of time and the legislative amendment proposals set out in paragraph 6 above, **can effectively tackle** the problem of SFE; and
- (c) in terms of the proportionality of penalty, the introduction of a progressive fixed penalty system and the setting up of progressive penalty levels and increments, on top of the future

---

<sup>11</sup> That is, the same person is required to pay a higher fixed penalty, if he or she has been issued with an FPN for committing the same offence again.

fixed penalty level of \$6,000, may result in **an excessive maximum fixed penalty level** incommensurate with the fine level for other offences of a similar nature. Furthermore, if the amount of fixed penalty is to be raised, the maximum fine level to be imposed by the court based on relevant ordinances will have to be raised having regard to the progressive penalty levels and increments, which may result in **an excessive maximum fine to be imposed by the court**<sup>12</sup>.

## **Next steps**

25. Apart from consulting the ACFEH, we will also consult the LegCo Panel on Food Safety and Environmental Hygiene on 11 July 2023. After that, we plan to further develop the details of the legislative proposals in the second half 2023 to prepare for and carry out the consultation with the public and relevant sectors. After conducting the consultation and finalising the legislative proposals, we strive to introduce the Amendment Bill into the LegCo in the second half of 2024 subject to the progress of the drafting work.

## **Advice sought**

26. Members are invited to comment on the Government's preliminary proposals of legislative amendments and administrative measures for the second-stage review on environmental hygiene-related legislation.

**Environment and Ecology Bureau**  
**Food and Environmental Hygiene Department**  
**July 2023**

---

<sup>12</sup> According to the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance, under the circumstances specified in the Ordinance (for example, the person concerned fails to pay the fixed penalty within a specified time and fails to notify the Authority that he or she intends to raise a dispute), the magistrate is required to impose on the person concerned an additional fine equal to the amount of the fixed penalty on top of the fixed penalty amount. In other words, the maximum fine that can be imposed by the court under the corresponding ordinances for the relevant offenses should be twice or more than the fixed penalty.

