

For Discussion
On 27.09.2007

Yau Tsim Mong District Council
Proposed Introduction of a Fixed Penalty System for Smoking Offence

Purpose

This Bureau proposes to introduce a fixed penalty system (FPS) for smoking offence. This paper aims to brief Members on the latest progress and seek Members' views on the proposal.

Proposed Fixed Penalty System for Smoking Offence

Background

2. During the discussion of the *Smoking (Public Health) Amendment Bill 2005* in the Legislative Council (LegCo) Bills Committee, the Administration undertook to design and put in place a FPS for the offence of smoking in a statutory no smoking area. After the passage of the *Smoking (Public Health) Amendment Bill 2005*, we have given detailed consideration to the design of such a system. We consulted the LegCo Panel on Health Services on 1 June this year and the Panel hoped that we would implement the system as soon as possible. Our proposal is outlined below.

Proposal for a Fixed Penalty System

3. Under the *Smoking (Public Health) Ordinance* (the Ordinance), any person who contravenes the statutory smoking prohibition by smoking in a statutory no smoking area is liable on summary conviction to a maximum fine of \$5,000. Under the proposed FPS, a person who is believed, by a law enforcement officer, to be contravening or have contravened the statutory smoking prohibition under the Ordinance may discharge his liability for conviction of the respective offences by payment of a fixed penalty. The proposed legal framework and practical procedures would be modelled on similar FPSs for other minor offences under other ordinances, especially that for littering (c.f. *Fixed Penalty (Public Cleanliness Offences) Ordinance*, Cap. 570).

Penalty Level

4. The penalty under the FPS should be set at a level sufficient to achieve the desired deterrent effect without arousing too much public objection. The actual level of penalty for the 345 cases of smoking offence imposed by the court since 1 January 2007 ranges from \$200 to \$1,500 with an average of \$740. We propose to fix the penalty level at \$1,500. This is comparable to the high end of the penalty levels meted out by the Courts and is on a par with public cleanliness offences which equally have public health implications.

Enforcement Authorities and Officers

5. Under the proposed FPS for smoking offences, the Tobacco Control Office (TCO) will remain the leading enforcement authority to be empowered to issue fixed penalty tickets in **all** statutory no smoking areas. To cater for public venues managed by government departments where a relatively higher volume of enforcement actions is expected, we propose that the following government departments are also to be vested with the enforcement power to issue fixed penalty tickets under the proposed FPS in respect of those statutory no smoking areas in public venues under their management –

Enforcement Department	Relevant Statutory No Smoking Areas
Leisure and Cultural Services Department (LCSD)	Public bathing beaches, public pleasure grounds, public swimming pools, stadiums and indoor areas of other public facilities under the management of LCSD
Food and Environmental Hygiene Department (FEHD)	Indoor areas of public markets under the management of FEHD
Housing Department (HD)	Statutory no smoking areas within public housing estates and premises under the management of HD

The government departments concerned may appoint in writing any public officer under their respective purview as enforcement officers under the proposed FPS. It should be noted that these departments have their work priorities. Vesting them with enforcement authority under the proposed FPS is meant to complement the work of TCO in the above listed public premises. The enforcement actions against smoking offence through the issue of fixed penalty tickets will form part of their management work, but will not overtake their current work priorities and is subject to the feasibility of manpower deployment of the departments concerned.

6. Besides, the Police Force will continue to play the current supporting role in the issue of fixed penalty tickets. While police officers will not regularly inspect shopping malls, restaurants, cinemas and other indoor public areas, they

will take actions by giving verbal advice or issuing fixed penalty tickets or summonses with regard to the circumstances when they witness obvious illegal smoking. In situations where the offender refuses or fails to produce proof of identity and the assistance of the Police is requested, or where disorderly manners or criminal offences are involved, the Police will provide the necessary support.

Proposed Fixed Penalty Proceedings

7. If an enforcement officer has reason to believe that a person is contravening or has contravened the statutory smoking prohibition under the Ordinance, he may give the person a notice in prescribed form ("the fixed penalty notice") offering him an opportunity to discharge his liability to conviction for that offence by payment of the fixed penalty. For the purpose of taking enforcement actions, the officer may require the person to whom the notice is to be given to supply his name, address and contact telephone number and produce proof of identity for inspection. Failing to comply with this requirement to provide the required personal information will be an offence. It is also an offence to provide false information willfully in the circumstances.

8. A person who has received a fixed penalty notice may pay the full amount of the fixed penalty shown in the notice to discharge his liability for the smoking offence, and he shall then not be liable to be prosecuted or convicted for the offence under the Ordinance. The fixed penalty ticket will also contain information on how he should proceed if he wishes to dispute liability. If he does not pay the fixed penalty within a specified period, he will be given a reminder and be reminded that if he wishes to dispute liability for the offence, he should notify the authority in writing. Provisions will be made to allow an application to be made to the court for payment of fixed penalty together with the administrative costs by the person concerned if he has neither paid the fixed penalty despite reminder nor given any notification that he wishes to dispute liability. We are also considering imposing an additional penalty in these cases (as in the case of public cleanliness offence).

9. A person who has received a fixed penalty notice and has given notification about his wish to dispute liability will be issued with a summons for the smoking offence and the case will be heard before a magistrate. We will consider proposing an additional penalty to be imposed (as in the case of public cleanliness offence) on top of any penalty and costs which may be awarded upon his conviction if he offers no defence or a defence which is frivolous or vexatious. However, at any time before the magistrate hears the case, the person concerned may still discharge his liability for the smoking offence by duly paying the full amount of the fixed penalty together with the additional penalty.

Progress and Timetable

10. We have completed a preliminary round of consultations with relevant government bureaux and departments and are presently making preparations for the drafting of the primary legislation to provide for the proposed FPS for smoking offence. We currently aim to introduce the bill to the LegCo by the end of 2007 / early 2008 subject to the availability of legislative timeslots, smooth progress in drafting and resolution of other related practical matters relevant to the proposed FPS.

11. The Department of Health has also been liaising with relevant government departments and the Judiciary to explore and prepare for the necessary practical procedures and information system to support the issue of fixed penalty notices and related follow-up actions. It is estimated that some ten months would be needed to put in place the practical arrangements necessary for supporting the FPS after enactment of the primary legislation. Subject to the legislative progress and smooth implementation of supporting arrangements, our current target is for the FPS to come into force by 2008 / early 2009.

Food and Health Bureau
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