

Consultation Document

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



**Environment and
Ecology Bureau**

The Government of the
Hong Kong Special Administrative Region
of the People's Republic of China

December 2022

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Chapter 1 Foreword

Purpose

- 1.1 To combat environmental hygiene problems such as littering, shopfront extension and disposal of waste in a more effective manner, the Government proposes 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”) for stronger deterrent effect; and to make related legislative amendments. This consultation paper seeks views from the community on the Government’s preliminary proposal.

Background

- 1.2 The Government is committed to enhancing the environmental hygiene and cityscape of Hong Kong. In the past few months, the District Matters Co-ordination Task Force (“the Task Force”) led by the Deputy Chief Secretary for Administration has taken measures on various fronts to endeavor to enhance environmental hygiene in Hong Kong in a short period of time. The Chief Executive announced in the 2022 Policy Address that the next steps of the 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 and the preliminary proposal has been put forth to the Legislative Council (“LegCo”) in mid-December 2022 as planned.
- 1.3 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 put forth in mid-2023.

Chapter 2 Key Proposals

2.1 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 without any adjustment since June 2003. On the other hand, the Government Programme on Tackling Hygiene Black Spots commenced in August this year has achieved some initial success. In order to sustain, consolidate and enhance Hong Kong's environmental hygiene in the long run, the Task Force considers it necessary to raise the statutory penalties of environmental hygiene offences to increase the deterrent effect and strengthen the law-abiding value of the public. To complement the raising of fixed penalty level, we will continue to carry out publicity and education, as well as promote community participation.


Littering, disposal of waste and spitting, etc.

2.2 The cumulative inflation rate in Hong Kong has reached about 60%¹ since the increase in fixed penalty level for scheduled offences under the Fixed Penalty Ordinance in 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—

- (i) Display of bills or posters without permission
- (ii) Depositing of litter or waste in public places
- (iii) Spitting in public places
- (iv) Fouling of street by dog faeces
- (v) Depositing of litter in country parks and special areas
- (vi) Spitting in country parks and special areas
- (vii) Marine littering.

¹ Source: Census and Statistics Department

Shopfront Extension (“SFE”)

- 2.3 The offence of obstruction of public places under the Fixed Penalty Ordinance mainly targets at SFE. SFE affects road access and environmental hygiene, and causes nuisance and hazards to pedestrians and traffic. It is one of the environmental hygiene and street management issues of major concern to the public. At the meeting of the Panel on Food Safety and Environmental Hygiene of the LegCo in June 2022, Members pointed out that the existing fixed penalty of \$1,500 was obviously insufficient and requested the Government to review and raise the penalty level.
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- 2.4 The Government has stepped up enforcement actions against 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.
- 2.5 In fact, we notice that 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.
- 2.6 Subsequent to the implementation/extension of the trial scheme in September last year and June this year respectively, the Food and Environmental Hygiene Department (“FEHD”) has further adopted new enforcement strategies against SFE gradually in all districts since October this year to increase the cost of non-compliance. The measures include conducting joint-operations with the Hong Kong Police Force to remove and seize obstructive items illegally placed on the streets. FEHD also issues multiple fixed penalty tickets to repeated offenders within a short period of time to further increase their cost of non-compliance. While the enforcement strategy of deploying resources to take stringent actions against SFE has achieved certain results, we consider it necessary to substantially raise the fixed penalty level to achieve greater deterrent effect for sustaining the results.
- 2.7 In view of the above considerations, we propose raising the fixed penalty level for “obstruction of public places” to \$6,000.

Disposal of large amount of construction or other waste

2.8 The legislative intent of section 16A(1) of the Waste Disposal Ordinance (Cap. 354) (i.e. “unlawful depositing of waste”, an offence under Fixed Penalty Ordinance) is to tackle illegal disposal of a large amount of construction or other waste. The



illegal disposal of waste on roads and in other public places causes serious environmental pollution and traffic safety hazards, and is a major concern of the public. Despite the Environmental Protection Department’s (“EPD”) continuous efforts in tackling illegal disposal of construction waste with a multi-pronged approach, it has been a challenging task to successfully enforce the law and prosecute offenders as the illegal activities are often conducted within a very short period of time at inconspicuous locations and at odd hours. We consider it necessary to raise the fixed penalty level for illegal disposal of waste to enhance the deterrent effect.

2.9 Illegal disposal of construction waste generally involves bulky and heavy waste and creates more serious environmental impact on public places such as streets and roads. From 2019 to 2021, the number of fixed penalty tickets issued by enforcement officers increased from 173 to 264, representing an increase of over 50%. Moreover, given that construction waste is generally heavier and harder than general waste, it cannot be collected by refuse collection vehicles with compactors. 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. Raising the fixed penalty to a higher level can better respond to the public demand that offenders should pay for the negative impacts of their actions on the environment.

2.10 In addition, while disposal of construction waste is subject to a statutory charge based on its type and quantity², some free-riders may seek to, for their own convenience, evade the charge through illegal disposal, even though they have already charged their clients fees to pay the statutory charge for disposal of construction waste. Some non-compliant contractors even treat the penalty as an operating cost for disposal of construction waste. Substantially raising the fixed penalty level can

² 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.

reduce the financial incentive to evade the charge.

- 2.11 Taking the above factors into account, we propose raising the fixed penalty level for “unlawful depositing of waste” to \$6,000.

Other legislative amendments to be considered arising from the increase in fixed penalty level

- 2.12 Scheduled offences under the Fixed Penalty Ordinance are offences under the corresponding legislation³. 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).

- 2.13 At present, the maximum fines which the court can impose for scheduled offences under the corresponding ordinances are all higher than the fixed penalty of \$1,500 under the Fixed Penalty Ordinance, and offenders are liable to imprisonment, etc. Generally speaking, the maximum penalty is applicable to the most serious cases. Moreover, according to the Fixed Penalty Ordinance, under circumstances specified in the Ordinance⁴, the magistrate shall, on top of the fixed penalty, impose an additional penalty equal to the amount of the fixed penalty. In other words, the maximum fines which the court may impose for scheduled offences under the corresponding legislation should be a double of the amount of the fixed penalty or above.

- 2.14 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. For example, in view of the proposal to raise the fixed penalty for spitting in public places and fouling of street by dog faeces to \$3,000, we need to raise the maximum fines which the court may impose for the corresponding offences under the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK) from level 2 (\$5,000) to level 3 (\$10,000). Furthermore, according to section 26 of the Country Parks Ordinance (Cap. 208), the maximum fine that may be imposed by its subsidiary legislation

³ 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).

⁴ For example, the person concerned neither pays the fixed penalty within the specified period nor informs the authority of his/her wish to dispute liability for the offence.

cannot exceed level 2 (\$5,000). In view of the Government’s proposal to raise the fixed penalty for littering and spitting in country parks and special areas to \$3,000, section 26 of the Country Parks Ordinance will need to be amended correspondingly in order to raise the maximum fine that may be imposed by its subsidiary legislation from level 2 to level 3 (\$10,000).

2.15 The proposed amendments to the fixed penalty level and the maximum fines which the court may impose for scheduled offences under the corresponding legislation are set out in **Annex I**. The number of fixed penalty tickets issued for scheduled offences under the Fixed Penalty Ordinance and the number of complaints received from 2019 to 2021 are set out in **Annex II** and **Annex III** respectively.

“Progressive Fixed Penalty”

2.16 As for whether “progressive fixed penalty”⁵ should be introduced to impose higher penalty on repeated offenders, various considerations have been taken into account and preliminary views are set out below.

2.17 On enforcement front, we anticipate that the implementation of “progressive fixed penalty” will increase the possibility of unnecessary conflicts between frontline enforcement officers and members of the public. For example, the person who receives a fixed penalty notice may dispute that the number and date of his/her past record of committing of the same offence are incorrect and hence refuse to receive the fixed penalty notice with a higher penalty. This would complicate the enforcement procedures on the ground.

2.18 The introduction of “progressive fixed penalty” needs to be supported by a real-time and comprehensive database. For example, the database has to record all information of the related offences, including the number and dates of scheduled offences committed by each offender. We also need to ensure that frontline officers of departments have real-time access to the records in the database during enforcement actions to verify the number of times the same scheduled offence have been committed by the offender in the past for issuing the corresponding fixed penalty ticket. We need to consider whether the resources and time required for developing such system is cost effective and is of the overall public interest.

2.19 As such, we consider that the fixed penalty level should be increased as soon as possible and multiple fixed penalty tickets be issued to repeated

⁵ It means that when the same person receives the fixed penalty notice for committing the same offence again, the person will need to pay a higher fixed penalty.

offenders in a short period of time having regard to the circumstances. As compared with “progressive fixed penalty”, the abovementioned approach is more effective. Unnecessary conflicts between frontline enforcement officers and the public can also be avoided. This could also be implemented within a shorter period of time. The introduction of “progressive fixed penalty” is therefore not recommended at this stage.

Enforcement, Publicity and Education

- 2.20 Apart from raising the fixed penalty level, we will continue to step up enforcement efforts, including issuing multiple fixed penalty tickets to repeated offenders in a short period of time having regard to the circumstances as well as handling cases by summons where appropriate. Various enforcement departments will also review and enhance enforcement arrangements under their purview from time to time, including updating enforcement guidelines where necessary, to ensure enforcement officers would adopt the same principles when taking enforcement actions, and strive to achievement impartiality and fairness. As mentioned under paragraph 1.3, the Government 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.
- 2.21 Relevant departments will also continue to carry out publicity and education, as well as promote community participation (for example, using various social media platforms, pamphlets, booklets and posters, etc.) to promote 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.

Chapter 3 Invitation for Comments

3.1 We expect that the community will generally support the Government’s proposal to raise the fixed penalty level to enhance the deterrent effect for achieving continuous improvement in environmental hygiene and cityscape. As for the magnitude of increase in the fixed penalty level, we understand that there may be various views in the community. We will earnestly listen to the community’s views on the preliminary proposal set out in Chapter 2 before finalising it. We plan to introduce the amendment bill into the LegCo in the second quarter of 2023 at the soonest.

3.2 Comments are invited on the following issues –

1. Whether there is a need to increase the fixed penalty level for the various public cleanliness and obstruction offences under the Fixed Penalty Ordinance;
2. Whether it is appropriate to increase of the fixed penalty for the seven offences which mainly involve the conduct of individual members of the public from \$1,500 to \$3,000;
3. Whether it is appropriate to increase the fixed penalty for the offence which mainly related to SFE from \$1,500 to \$6,000; and
4. Whether it is appropriate to increase the fixed penalty for the offence which mainly related to illegal depositing of large amount of construction or other waste from \$1,500 to \$6,000.

3.3 Please fill in the Feedback Form (**Annex IV**) and send your comments by post, fax, email or using the [e-form](#) on or before 19 January 2023 to:

Address	:	Environment and Ecology Bureau 17/F, East Wing Central Government Offices 2 Tim Mei Avenue Tamar, Hong Kong
Fax number	:	2136 3282
Email address	:	fixed_penalty_review@eeb.gov.hk

For submission by post, please mark “Views on raising fixed penalty level” on the envelope. For submission by fax, please mark “Views on raising fixed penalty level” on the submission.

3.4 It is voluntary for any member of the public to supply his / her personal data upon providing views on the consultation document. Any personal data provided with a submission will only be used for purpose of this consultation exercise.

- 3.5 The submissions and personal data collected may be transferred to the relevant Government bureaux, departments or agencies for purposes directly related to this consultation exercise. The relevant parties receiving the data are bound by such purposes in their subsequent use of such data.
- 3.6 The names and views of individuals and organisations which put forth submissions in response to the consultation document (“senders”) may be published for public viewing after conclusion of the consultation exercise. The Environment and Ecology Bureau (“EEB”) may, either in discussion with others or in any subsequent report, whether privately or publicly, attribute comments submitted in response to the consultation document. We will respect the wish of senders to remain anonymous and / or keep the views confidential in relation to all or part of a submission; but if no such wish is indicated, it will be assumed that the sender can be named and his / her views be published for public information.
- 3.7 Any sender providing personal data to EEB in the submission will have the right of access and correction with respect to such personal data. Any request for data access or correction of personal data should be made in writing to EEB (please refer to paragraph 3.3 for contact information).

**Existing and Proposed Fixed Penalty Levels for Scheduled Offences under
the Fixed Penalty Ordinance and
proposed relevant legislative amendments**

Corresponding item number under the Fixed Penalty Ordinance	Offence (Corresponding Legislation)	Existing Fixed Penalty Level	Proposed Fixed Penalty Level	Existing Penalty under the Corresponding Legislation	Proposed Penalty under the Corresponding Legislation¹
1.	Display of bills or posters without permission (Public Health and Municipal Services Ordinance (Cap. 132) Section 104A(2))	\$1,500	\$3,000	A fine at level 3 (\$10,000) ; daily penalty of \$300	N/A
2.	Depositing of litter or waste in public places (Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK) Section 4(1))	\$1,500	\$3,000	A fine at level 4 (\$25,000) and imprisonment for six months; additional daily penalty of \$300 for continuing offence	N/A
3.	Spitting in public places (Public Cleansing and Prevention of Nuisances Regulation	\$1,500	\$3,000	A fine at level 2 (\$5,000) on the first conviction; a fine at level 3 (\$10,000) on the second or subsequent conviction;	A fine at level 3 (\$10,000) on the first conviction; a fine at level 4 (\$25,000) on the second or subsequent conviction;

¹ We will review the other penalties that may be imposed (i.e. other than the maximum fine) in the next stage of the legislative review.

Corresponding item number under the Fixed Penalty Ordinance	Offence (Corresponding Legislation)	Existing Fixed Penalty Level	Proposed Fixed Penalty Level	Existing Penalty under the Corresponding Legislation	Proposed Penalty under the Corresponding Legislation¹
	(Cap. 132BK) Section 8A(1))			additional daily penalty of \$300 for continuing offence	additional daily penalty of \$300 for continuing offence
4.	Fouling of street by dog faeces (Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK) Section 13(1)(a))	\$1,500	\$3,000	A fine at level 2 (\$5,000) on the first conviction; a fine at level 3 (\$10,000) on the second or subsequent conviction; additional daily penalty of \$300 for continuing offence	A fine at level 3 (10,000) on the first conviction; a fine at level 4 (\$25,000) on the second or subsequent conviction; additional daily penalty of \$300 for continuing offence
5.	Depositing of litter in country parks and special areas (Country Parks and Special Areas Regulations (Cap. 208A) ² Section 12(1)(c))	\$1,500	\$3,000	A fine at level 1 (\$2,000) and imprisonment for three months; additional daily penalty of \$100 for continuing offence	A fine at level 3 (\$10,000) and imprisonment for three months; additional daily penalty of \$100 for continuing offence
6.	Spitting in country parks and special areas (Country Parks	\$1,500	\$3,000	A fine at level 1 (\$2,000) and imprisonment for three months;	A fine at level 3 (\$10,000) and imprisonment for three months; additional daily

² Country Parks and Special Areas Regulations (Cap. 208A) is subsidiary legislation made under section 26 of the Country Parks Ordinance (Cap. 208). According to section 26 of the Country Parks Ordinance, the maximum fine that may be imposed by its subsidiary legislation cannot exceed level 2 (\$5,000). Hence, in order to raise the fixed penalty level for items (5) and (6) of the scheduled offences to \$3,000, section 26 of the Country Parks Ordinance will need to be amended correspondingly so that the maximum fine that may be imposed by its subsidiary legislation will be raised from level 2 to level 3 (\$10,000).

Corresponding item number under the Fixed Penalty Ordinance	Offence (Corresponding Legislation)	Existing Fixed Penalty Level	Proposed Fixed Penalty Level	Existing Penalty under the Corresponding Legislation	Proposed Penalty under the Corresponding Legislation¹
	and Special Areas Regulations (Cap. 208A) ² Section 12(1)(e))			additional daily penalty of \$100 for continuing offence	penalty of \$100 for continuing offence
6A.	Obstruction of public places (Summary Offences Ordinance (Cap. 228) Section 4A)	\$1,500	\$6,000	A fine at level 2 (\$5,000) and imprisonment for three months	A fine at level 4 (\$25,000) and imprisonment for three months
7.	Marine littering (Summary Offences Ordinance (Cap. 228) Section 4D(1))	\$1,500	\$3,000	A fine at level 3 (\$10,000) and imprisonment for six months. Where an offence is committed from any vessel, or from any place or premises, (not being a place or premises in respect of which management or control is vested in a public officer or public body), the offender is liable to a fine at level 5 (\$50,000) and to imprisonment for one year.	N/A

Corresponding item number under the Fixed Penalty Ordinance	Offence (Corresponding Legislation)	Existing Fixed Penalty Level	Proposed Fixed Penalty Level	Existing Penalty under the Corresponding Legislation	Proposed Penalty under the Corresponding Legislation¹
8.	Unlawful depositing of waste (Waste Disposal Ordinance (Cap. 354) Section 16A(1))	\$1,500	\$6,000	A fine of \$200,000 and imprisonment for six months on the first conviction; a fine of \$500,000 and imprisonment for six months on the second or subsequent conviction; additional daily penalty of \$10,000 for continuing offence.	N/A

**Number of Fixed Penalty Tickets Issued
for Scheduled Offences under the Fixed Penalty Ordinance**

Corresponding item number under the Fixed Penalty Ordinance	Offence	Enforcement Department	2019 (No.)	2020 (No.)	2021 (No.)
1.	Display of bills or posters without permission	Hong Kong Police Force (HKPF) Food and Environmental Hygiene Department (FEHD)	3 652	3 486	3 217
2.	Depositing of litter or waste in public places	HKPF FEHD Housing Department (HD) Leisure and Cultural Services Department (LCSD)	42 497	42 348	46 437
3.	Spitting in public places	HKPF FEHD HD LCSD	2 388	1 533	1 651
4.	Fouling of street by dog faeces	HKPF Agriculture, Fisheries and Conservation Department (AFCD) FEHD HD LCSD	23	43	33
5.	Depositing of litter in country parks and special areas	HKPF AFCD	103	76	40

Corresponding item number under the Fixed Penalty Ordinance	Offence	Enforcement Department	2019 (No.)	2020 (No.)	2021 (No.)
6.	Spitting in country parks and special areas	HKPF AFCD	2	0	0
6A.	Obstruction of public places	HKPF FEHD	7 612	10 853	14 897
7.	Marine littering	HKPF AFCD FEHD LCSD Marine Department	24	39	21
8.	Unlawful depositing of waste	HKPF Environmental Protection Department	173	214	264

**Number of Complaints against
Scheduled Offences under the Fixed Penalty Ordinance**

Corresponding item number under the Fixed Penalty Ordinance	Offence	2019 (No.)	2020 (No.)	2021 (No.)
1.	Display of bills or posters without permission	15 443	7 771	5 917
2.	Depositing of litter or waste in public places	2 262	2 358	3 117
3.	Spitting in public places	57	126	113
4.	Fouling of street by dog faeces	1 448	1 125	1 280
5.	Depositing of litter in country parks and special areas	19	23	25
6.	Spitting in country parks and special areas	1	4	0
6A.	Obstruction of public places	15 022	18 904	23 510
7.	Marine littering	16	19	31
8.	Unlawful depositing of waste	2320	2012	1981

Feedback Form ([Click here](#) to link to the e-form)

Name*:	(Mr/Ms/Miss)
Organisation*:	
Contact no. *:	

*Optional

Views on the key proposals

1. There is a need to raise the fixed penalty level for various public cleanliness and obstruction offences under the Fixed Penalty Ordinance.

Agree

Disagree

Remarks: _____

2. Raise the fixed penalty level for the following seven offences which mainly involve the conduct of individual members of the public from \$1,500 to \$3,000 -

- (i) Display of bills or posters without permission;
- (ii) Depositing of litter or waste in public places;
- (iii) Spitting in public places;
- (iv) Fouling of street by dog faeces;
- (v) Depositing of litter in country parks and special areas;
- (vi) Spitting in country parks and special areas; and
- (vii) Marine littering.

Appropriate Level

Too Low

Too High

Remarks: _____

3. Raise the fixed penalty level for the offence which mainly related to shopfront extension from \$1,500 to \$6,000.

Appropriate Level

Too Low

Too High

Remarks: _____

4. Raise the fixed penalty level for the offence which mainly related to unlawful depositing of large amount of construction or other waste from \$1,500 to \$6,000.

Appropriate Level

Too Low

Too High

Remarks: _____

5. **Other comments:** _____
