

Enhanced Measures against Shop Front Extensions Consultation Document



Public Consultation on the Enhanced Measures against Shop Front Extensions

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Chapter 1 Overview

1.1 Shop front extensions (SFEs) broadly refer to the occupation of public places by shops, including food premises, in front of or adjacent to their premises for the purpose of conducting or facilitating business activities. Such extensions are very often at the expense of road access, safety and environmental hygiene, and affect the quality of city life. They usually cause nuisance, inconvenience and hazards to pedestrians and traffic. In some cases, pedestrians are even forced to walk on the carriageway intended for vehicles due to obstruction on the walkway.

1.2 Currently, the Government tackles the problem of SFEs through a four-pronged approach, namely:–

- (a) law enforcement by individual departments using powers under the relevant Ordinances;
- (b) joint operations led by District Officers (DOs) for more complex cases involving several departments;
- (c) collaboration with the District Councils (DCs); and
- (d) public education and publicity.

1.3 Despite the efforts made, the problem of SFEs persists. Proliferation of SFEs continues to compromise the safety and access of pedestrians, drivers and other street users.

1.4 In order to improve our living environment, the Government considers that efforts should be stepped up to tackle problems associated with SFEs. Enforcement measures against SFE offences should be enhanced and a fixed penalty system may be considered in order to heighten the deterrent effect.

1.5 The Government also proposes to enhance community involvement by capitalising on DCs' knowledge of the district characteristics, and the needs and aspiration of people in their district. Public education and publicity efforts should be stepped up as well in order for messages against SFEs to reach members of the public and shop operators more effectively.

1.6 The Home Affairs Department, in consultation with the Food and Environmental Hygiene Department (FEHD), the Lands Department (LandsD), the Hong Kong Police Force (HKPF) and the Buildings Department (BD), has prepared this document to consult the public on how we can tackle problems associated with SFEs more effectively. The consultation period will last for four months from 14 March till 14 July 2014.

Chapter 2 Present Situation

What are SFEs

2.1 Currently, various forms of SFEs exist. They include but are not limited to –

- (a) unauthorised alfresco dining services in front of or adjacent to food premises;
- (b) additional counters beyond the confines of shops for sale of commodities such as takeaways (e.g. lunch boxes, cooked snacks), fresh produce (e.g. vegetables, meat, seafood, flowers) or grocery items (e.g. tissue paper, detergents, milk formula products);
- (c) placement of articles such as wet goods (e.g. flowers, seafood), grocery items (e.g. tissue paper, detergents, milk formula products) or construction materials (e.g. brick, cement) beyond the confines of shops with or without platforms, shelves or ramps for temporary storage or display purposes;
- (d) placement of publicity materials (e.g. stand-alone advertisement boxes, easy-mount frames, electric light boxes) beyond the confines of shops;
- (e) conduct of business operations (e.g. iron bar cutting, welding works, car repair and washing, recycling activities, mail sorting) on pavements or at roadsides outside the shops; and
- (f) attachment of fixed canopies to shops to provide a covered “shelter” area, or attachment of platforms at shop front to extend the shops’ business area.

Problems with SFEs

2.2 Owing to high shop rentals and keen business competition, many shop operators are tempted to extend their business areas onto the pavements. However, SFEs often obstruct the pavements and cause nuisance, inconvenience and hazards to pedestrians and traffic.

How do we tackle SFEs

2.3 A number of departments, including FEHD, HKPF, LandsD and BD, are empowered under various Ordinances to tackle different situations involving SFEs. They are summarised below –

- (a) Obstruction of Public Places:
FEHD and HKPF can, under delegated authority, take prosecution action under section 4A of the Summary Offences Ordinance (Cap. 228) for obstruction of public places where such obstruction inconveniences or endangers road users;
- (b) Conduct of Food Business outside Licenced Food Premises:
FEHD can prosecute the licensees of food premises issued with a full licence for conducting food business beyond the confines of their premises under section 34C of the Food Business Regulation (Cap. 132X);
- (c) Obstruction to Scavenging Operations:
Where there is obstruction by goods or other items placed at the shop front, regardless of the business in which the shops operate, FEHD can take enforcement action under sections 22(1)(a) or 22(2)(a) of the Public Health and Municipal Services Ordinance (Cap. 132) if such goods obstruct FEHD's cleansing operations;
- (d) Illegal Hawking:
FEHD can prosecute offenders under section 83B of Cap. 132 if there is sufficient evidence that shop operators are engaged in illegal hawking outside their shops;
- (e) Erection of Unauthorised Structures on Government Land at shop front:
LandsD can take enforcement action under section 6 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) against such unauthorised structures erected on unleased government land as concrete platforms, ramps or steps; and
- (f) Erection of Unauthorised Building Works attached to and supported by Buildings:
BD can take enforcement action under section 24 of the Buildings Ordinance (Cap. 123) where there are erections of unauthorised shop extensions encroaching onto the pavement, or unauthorised projecting structures attached to and supported by

buildings.

Limitations of Existing Legal Tools

(A) Lack of a Targeted Legal Tool against SFEs

2.4 A lot of the legal tools mentioned above have their specific intents and may not be very effective in tackling SFEs in certain specific situations. For example, section 6 of Cap. 28 is less effective in tackling SFEs that are mobile and temporary in nature because it provides for a notice period during which shop operators would have sufficient time to remove the goods or articles in question temporarily so as to comply with the notice, only to put them back afterwards without being prosecuted. For section 83B of Cap. 132, substantiation by evidence on the act of sale and purchase is required; while such acts usually involve money consideration, not all business transactions involving SFEs entail money transaction outside the shop premises. As regards section 34C of Cap. 132X, FEHD can only deal with SFEs of food premises issued with a full licence but not other types of shops.

(B) Long Lead Time of Prosecution

2.5 Section 4A of Cap. 228 appears to be a more effective piece of legislation to tackle SFEs. Over the years, the Government has had successful experiences in invoking the provision to eliminate the proliferation of on-street recycling cages and serious SFE cases.

2.6 Nonetheless, the deterrent effect of section 4A of Cap. 228 is limited by the long lead time of prosecution. Currently, prosecution for the offence is instituted by way of issuing summonses. Given the substantial amount of administrative work required, it takes about one to two months in general for a summons to be issued based on substantive evidence after the offending act is first observed. The time required between the issue of a summons and court hearing may take another one to two months, and it can take even longer time if the defendant chooses to plead not guilty in the first hearing.

(C) Light Penalties

2.7 The deterrent effect that a prosecution under section 4A of Cap. 228 may bring is further diminished by the often low level of penalties imposed. For instance, in 2013, persons convicted of the offence were fined \$595 on average while the maximum level of fine under the Ordinance is \$5,000. In most cases, the penalties are insignificant

compared to the high rentals that shop operators would have to pay for any additional space. Many offending shop operators therefore take these penalties as part of their operating costs.

Overall speaking, there is a need to review the situation with a view to delivering more effective enforcement to tackle problems associated with SFEs.

Chapter 3 Enforcement Measures

Fixed Penalty System

3.1 The Government is looking for an additional enforcement tool to tackle SFEs more efficiently and effectively. It should help address the deficiency of the existing summons system, namely, the long lead time of prosecution and light penalties. With this in mind, the Government is now exploring the possibility of introducing a fixed penalty system against SFE offences.

(A) Basic Features

3.2 With reference to certain road traffic and public cleanliness offences for which a fixed penalty is provided under existing legislation, the proposed fixed penalty system may be designed to cater for straight-forward and clear-cut cases of SFEs.

3.3 An appropriate fixed penalty system should have the following features –

- (a) it should be able to catch the person who commits the offending act as witnessed by law enforcers (i.e. caught “red-handed”), or the person-in-charge of the shop who is believed to have committed the offending act given sufficient circumstantial evidence (e.g. stacks of goods have been placed in front of the shop for a certain period of time; goods appeared to be of similar nature to those on sale inside the shop; or price tags and shop labels were stuck on those goods); and
- (b) where there is sufficient evidence (albeit circumstantial) of a SFE offence, the system should enable a fixed penalty ticket to be served on a person-in-charge of the shop who is found present at the scene. Where applicable, the person-in-charge may be the owner, licensee or manager of the shop, or anyone who has or admitted to have managerial control over the shop.

(B) Level of Fixed Penalty

3.4 In order to achieve the desired deterrent effect, the level of fixed penalty should be carefully considered having regard to the following –

- (a) the severity of the offence;
- (b) the fines of other offences of similar severity under other Ordinances;
- (c) the current level of fixed penalty under the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) (i.e. at \$1,500); and
- (d) the likelihood that the persons-in-charge would contest the prosecution by denying ownership of the articles causing obstruction at a SFE area, if the value of the articles is below that of the amount of fixed penalty.

Enhancing Inter-departmental Enforcement

3.5 As the proposed fixed penalty system is supposed to be an additional measure to tackle SFEs and will not replace the other existing enforcement tools such as issuance of summons, we will continue to improve the existing multi-disciplinary enforcement regime, and enforcement departments including FEHD, HKPF, LandsD and BD will continue to take enforcement action on their own against SFE cases under their purview.

3.6 Enforcement departments will also enhance coordination amongst themselves in their enforcement plans and mount small-scale joint operations by themselves more frequently. When dealing with more complex SFE cases that cannot be effectively resolved after substantial efforts by enforcement departments, DOs will continue to coordinate large-scale inter-departmental joint operations amongst FEHD, HKPF, LandsD and BD.

Economic Impact

3.7 Whilst taking enhanced enforcement action and introducing a fixed penalty system could help tackle SFEs more effectively on one hand, this could also have an impact on the livelihood of some businesses and their employees on the other. We need to strike a balance carefully, taking into account the views of the community.

A fixed penalty system may be considered on top of stepped up enforcement action. Nonetheless, a balance should be struck between introducing a higher level of deterrence and minimising the impact on businesses.

Chapter 4 Community and District Councils' Involvement

Current Role of DCs

4.1 Under section 61 of the District Council Ordinance (Cap. 547), a major function of DCs is to advise the Government on matters affecting the well-being of the people in the district. In practice, DCs have all along been playing an important role in encouraging public participation in various district activities including publicity campaigns to promoting public hygiene, such as Clean Hong Kong.

4.2 At present, enforcement departments and DOs consult respective DCs on enforcement strategies on SFEs from time to time and take specific actions where appropriate upon the advice of DCs or individual DC members. A typical example is Yuen Ngai Street (commonly known as Fa Hui (花墟)) in Mong Kok where the Yau Tsim Mong DC has suggested to departments concerned the stepping up of enforcement at specific black spots.

Enhanced Role of DCs

4.3 Given that the problem of SFEs has been a long-standing district issue, there is room for the Government to strengthen collaboration with DCs in tackling SFEs across all the 18 districts. Specifically, DCs may be invited to help –

- (a) work out the criteria for determining the priority of enforcement against SFEs for consideration by relevant departments;
- (b) based on the agreed criteria, advise for consideration by relevant departments which location(s) with SFEs should be assigned a higher priority in enforcement action and hence designated as “black spots”;
- (c) participate in general and/or district-specific public education and publicity efforts against SFEs. For example, DCs may participate in district campaigns and site visits with relevant departments to SFE black spots, whereby advisory messages are conveyed to shop operators;
- (d) make joint efforts with the enforcement departments in monitoring and reviewing the effects of joint operations; and

- (e) assist the enforcement departments in monitoring the trend of SFE complaints.

Criteria for determining Enforcement Priority

4.4 When taking part in drawing up the criteria for determining the priority of enforcement against SFEs (cf paragraph 4.3(a) above), DCs may take into account the following –

- (a) road access and safety of pedestrians, vehicles and other road users;
- (b) extent and nature of the SFEs;
- (c) public hygiene and amenity;
- (d) effectiveness of past enforcement action;
- (e) instances of complaints;
- (f) district characteristics of the concerned area; and
- (g) community feedback and aspirations.

4.5 Given their local knowledge and close contacts with residents, DCs are well placed to advise the Government on the priority of enforcement. In general, SFEs that pose imminent danger to the pedestrians and traffic should be assigned a higher priority. On the other hand, SFEs that constitute a distinct characteristic and contribute to the vibrancy of the district may either be assigned lower priorities or even tolerated, subject to the conditions that the SFEs do not cause any imminent danger to pedestrians and traffic, and that the shop operators can exercise self-discipline by adhering to a level of extension agreed with the enforcement departments.

Public Education and Publicity

4.6 The continued patronage by members of the public in shops with SFEs may, in effect, have encouraged shop operators to continue the malpractice. Therefore, public awareness of the problem is conducive to improving the situation.

4.7 At present, Announcements in the Public Interest (APIs) are aired

on television and radio on the problems caused by SFEs, exhorting shop operators not to extend their business areas and obstruct the pavements. While territory-wide publicity efforts through APIs should continue, more education and publicity activities bearing specific district characteristics at the district level are considered necessary. Pamphlets or leaflets on the legal consequences of SFEs and street obstruction in general may be produced and distributed to shops and other businesses that operate on the streets.

The Government encourages community involvement in alleviating problems associated with SFEs. DCs, in particular, are invited to play a stronger role.

Chapter 5 Invitation of Views

5.1 Under the motto of “no livelihood issue is trivial (民生無小事)”, the Government would like to listen to your views on how to tackle problems associated with SFEs more effectively. While the Government is open to how the subject matters raised in this consultation document should be addressed, views are invited on the following issues specifically –

Enforcement Measures

- (a) Do you support stepping up enforcement action against SFEs?
- (b) Do you support the introduction of a fixed penalty system to tackle SFEs?
- (c) What do you think would be an appropriate level of fixed penalty?
- (d) What are your concerns about a fixed penalty system?
- (e) How to strike a balance between enhancing enforcement and protecting the livelihood of businesses?

Community and DCs' Involvement

- (f) What should be the extent of DCs' involvement in tackling SFEs?
- (g) What should be the criteria to be considered by DCs when they advise the Government on the priority of enforcement against SFEs?
- (h) How should public education and publicity efforts against SFEs be enhanced?

5.2 Please forward your views and comments to us by email, mail or facsimile on or before 14 July 2014:

Email address: sfe@had.gov.hk

Address: Division II
Home Affairs Department
31/F Southorn Centre
130 Hennessy Road
Wan Chai, Hong Kong

Fax number: 3107 0697

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

5.4 The submissions and personal data collected may be transferred to other Government bureaux and departments or agencies for purpose(s) directly related to this consultation exercise. The parties receiving the data are bound by such purposes in their subsequent use of such information.

5.5 The names and views of individuals and organisations which put forth submissions in response to this consultation document (“senders”) may be published, in whole or in part, for public viewing after conclusion of the public consultation exercise. The Government may use, adopt or develop any views put forward without seeking permission or providing acknowledgement of the party making the view. The Government may, either in discussion with others or in any subsequent report, whether privately or publicly, attribute comments submitted in response to the consultation document. If you do wish to remain anonymous and / or keep your views submitted in relation to all or part of a submission confidential, it is necessary for you to state so when making your submission.

5.6 Any sender providing personal data to this Department in the submission will have right of access to or correction of personal data contained in the submission. Any requests for data access or correction of personal data should be made in writing to –

Address: Administrative Officer (2)
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31/F Southorn Centre
130 Hennessy Road
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Home Affairs Department
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