LCQ1: Combating the offence of shopfront extension

Following is a question by Dr the Hon Lo Wai-kwok and a reply by the Secretary for Environment and Ecology, Mr Tse Chin-wan, in the Legislative Council today (May 21):

Question:

In 2023, the fixed penalty for the offence of shopfront extension was increased to $6,000. However, some members of the public have reflected that law enforcement officers have not issued fixed penalty notices (FPNs) in accordance with the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance when enforcing the law, but have instead instituted prosecution by way of summons under the Summary Offences Ordinance. If a defendant pleads guilty by letter and the court accepts the plea, the fine imposed under the Magistrates Ordinance will not exceed $2,000. In this connection, will the Government inform this Council:

(1) of the respective numbers of FPNs and summonses issued by the Government for the aforesaid offence since the increase in the fixed penalty, along with the respective amounts of fines involved; the respective numbers of first-time and repeated offenders among these cases, how many times each repeated offender has committed the offence, and the amount of fines imposed on each occasion; the number of convicted persons sentenced to a fine of $6,000 or more, or to imprisonment, and the fines and terms of imprisonment imposed;

(2) whether it has regularly reviewed the criteria for issuing FPNs and summonses by law enforcement officers, including how discretionary powers are exercised; if so, of the details; if not, the reasons for that; and

(3) whether it has studied ways to ensure proportionality between penalties and offences, as well as consistency in sentencing in the course of the enforcement and adjudication of the aforesaid offence, and further explored the possibility of increasing the penalty to enhance its deterrent effect, including the introduction of progressive fixed penalty; if so, of the details; if not, the reasons for that?

Reply:

President,

Shopfront extension not only affects road access and environmental hygiene, it also causes nuisance to pedestrians and traffic. It is one of the environmental hygiene and street management issues of major concern to the public. At present, if the Food and Environmental Hygiene Department (FEHD) found shopfront extension situation during inspections, the offenders would be issued with fixed penalty notices in accordance to the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570), or prosecuted for

"obstruction of public places" under the Summary Offences Ordinance (Cap. 228).

To more effectively sustain environment cleanliness, we have conducted a comprehensive review on environmental hygiene-related legislations and put forward relevant amendments. At the end of 2023, the fixed penalty level for shopfront extension, among other offences, was increased from $1,500 to $6,000; and the maximum fines which may be imposed by the Court was raised from Level 2 ($5,000) to Level 4 ($25,000). If shops made repeated violation within a short period, the FEHD can issue multiple fixed penalty notices to further increase the cost of non-compliance. After the new penalty has taken effect for a year, the number of fixed penalty notices issued against shopfront extensions was 90 per cent less than that in the previous year. At the end of 2024, we further introduced the second-stage legislative amendments to enhance enforcement effectiveness and efficiency, including to introduce new clauses on shopfront extension under the Public Health and Municipal Services Ordinance (Cap. 132), allowing the FEHD to require shops to remove obstructing articles without requiring police presence, and in cases where no owners of the articles have come forward, the department to remove the articles. The second-stage legislative amendments were passed by the Legislative Council after its third reading on May 8 this year and will take effect on August 17.

My responses to the question raised by Dr the Hon Lo Wai-kwok are as follows:

(1) We increased the fixed penalty levels and maximum penalty that the Court may imposed for "obstruction of public places" in 2023. Since the new penalty level took effect until March 31 this year, the FEHD issued 1 593 fixed penalty notices of $6,000 each against retail shops causing "obstruction of public places". The FEHD does not maintain a record of individuals receiving multiple fixed penalty notices. During the same period, the FEHD issued summonses to 29 offenders involving 36 prosecutions, of which 32 cases have been concluded with convictions. The fines range from $300 to $6,500, with five cases of $6,000 fine or above. Among the 29 offenders, four had committed violations for two to five times, with fines ranging from $500 to $6,500.

(2) In general, enforcement by fixed penalty notices is targeted at cases which are simple, straightforward, clear-cut and capable of being easily established, such as when shop operators were caught red-handed and admit to illegal shopfront extension. Where a case is contentious, more serious or complicated, they would be prosecuted by issuing summonses, such as when shops causing obstruction are also suspected of deploying staff to conduct illegal hawking activities on the street outside the shop, thus involving also illegal hawking offences; or involving repeated offenders. Sometimes enforcement officers cannot easily identify the offenders of shopfront extension on-site and need further investigation and some cases also require police assistance, such as when offenders refuse to show identification documents or assault enforcement officers. Some people also obstruct and impede officers in the discharge of their duties in a deliberately abusive manner. In these situations, enforcement officers will issue summonses or

even make arrests, and refer the cases to the Court for judgment according to evidence.

The FEHD has extensive experience in handling shopfront extension cases and has established guidelines and provided training for frontline staff. Frontline staff will, according to the guidelines, make prosecution decisions based on the actual circumstances and specific evidence of each case, and report to supervisors according to guidelines. Currently, 98 per cent of shopfront extension by retail shops are handled by issuing fixed penalty notices.

I have personally reviewed all the 36 summon cases. Among them, 31 cases involved more than one offences requiring handling by summonses, three cases involved disputes requiring police assistance, one involved a repeat offender who had previously received 18 fixed penalty notices and another involved serious large-scale obstruction. All these cases complied with the enforcement guidelines.

(3) During the first-stage legislative review, considering that the number of fixed penalty notices issues for "obstruction of public places" nearly doubled from 2019 to 2021, from about 7 600 to nearly 14 900, and the number of complaints increased from about 15 000 to over 23 500 during the same period, we increased the penalty levels to strengthen deterrent effect. As mentioned earlier, since the new penalty levels took effect at the end of 2023, there has been notable improvement in shopfront extension situations with visible results.

In light of this, when taking forward the second-stage legislative amendments, we considered that there is, at this stage, no need to introduce a progressive penalty system. We can first observe the overall effect of the legislative amendments in deterring shopfront extension. If necessary, we can further review whether to introduce progressive penalty system or further increase the maximum penalties that courts can impose in the future.

As regards the penalties imposed for cases prosecuted by summons, the Court makes judgment according to circumstances of individual cases. Prosecution officers will provide necessary information to the Court, including case details, conviction records of offenders and relevant case statistics. To better assist the Court in making judgments, the FEHD will explore with the Department of Justice whether there is room for improvement in how the prosecution presents cases and provides information. In addition, if the penalty of an individual case is clearly too lenient, the Government will seek Court's review through the Department of Justice.

Thank you, President.