

**CONTROLLING OFFICER'S REPLY**

**FHB(FE)150**

**(Question Serial No. 1496)**

Head: (49) Food and Environmental Hygiene Department

Subhead (No. & title): (-) Not Specified

Programme: (3) Market Management and Hawker Control

Controlling Officer: Director of Food and Environmental Hygiene (Miss Vivian LAU)

Director of Bureau: Secretary for Food and Health

Question:

Regarding the stepping up of enforcement action against shop front extensions, it is pointed out in the report on "Direct Investigation into Regulatory Measures and Enforcement Actions against Street Obstruction by Shops" released by the Office of The Ombudsman in June 2014 that the strategy of "warning before prosecution" applied by the Department in most of the cases proved to be ineffective. In this connection, please advise this Committee on the following:

- (a) whether the Department will consider immediate issuing of a summons, lest the person-in-charge of the shop remove the goods or articles in question temporarily for compliance with the notice upon warning, but put them back afterwards without being prosecuted and continue to cause street obstruction;
- (b) if the answer to (a) is "yes", whether a ceiling will be set on the fines imposed per day and the maximum amount to be set; and
- (c) under what circumstances the Department will exercise discretion.

Asked by: Hon TIEN Puk-sun, Michael (Member Question No. 55)

Reply:

- (a) The Ombudsman issued a report on "Direct Investigation into Regulatory Measures and Enforcement Actions against Street Obstruction by Shops" in June 2014. Amongst the recommendations given to relevant departments, The Ombudsman recommended the Food and Environmental Hygiene Department (the Department) to prosecute habitual offenders immediately without issuing prior warning; step up efforts to take out prosecution and seizure under the "illegal hawking provision" for stronger deterrent effect; and take strict enforcement action against those shops which extend their business area beyond the "tolerated areas". The Department has taken on board The Ombudsman's recommendations, and adjusted its enforcement strategy accordingly.

- (b) The maximum penalty for contravention of Section 4A of the Summary Offences Ordinance (Cap.228) for causing street obstruction is \$5,000 or imprisonment for 3 months, while that for contravention of Section 83B of the Public Health and Municipal Services Ordinance (Cap. 132) for hawking without a licence is \$5,000 and imprisonment for 1 month for first conviction, and \$10,000 and imprisonment for 6 months for second and subsequent conviction.
- (c) The Department will take into consideration the number and nature of complaints received, manpower resources available, and the District Council's views in planning enforcement operation. Whether prosecution is to be taken out by way of summons or arrest and charge is contingent upon the actual circumstances on the ground.

- End -